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Nothing in literature seems to fascinate the human mind more than crime or detective stories.

About one hundred years ago Edgar Allen Poe wrote what is now called the "first detective story." It was a mixture of fact and fiction and, measured by modern standards for the literary form, not very attractive, but at that time it was quite successful and intrigued the public fancy. Since then Sir Arthur Conan Doyle's super-sleuth, Sherlock Holmes, has more completely captured the public imagination.

Thus, crime was dramatized and so made attractive until now we have dozens of crime story magazines, radio programs, and even comic strips, that are heard, or read, every day by millions of our people. All of this has created great public interest in crime and criminology and has developed a large number of self-proclaimed experts on the subjects. So-called experts often propound strange theories and undertake to solve the crime problem by a rule of thumb drawn mostly from their imagination.

At one time a so-called expert examined the contours of the heads of a large number of convicts in Italian penitentiaries and submitted to the world an exact formula for ascertaining a criminal human being. Shortly thereafter an Englishman applied this self-proclaimed expert's test to the students at Oxford University and obtained an identical result to that found in Italian prisons, namely, that Oxford was completely populated by criminals if the formula was correct, which, of course, it was not.

But during that period of time other significant developments were occurring in the history and science of criminology. Sir Robert Peel, a member of the English Parliament, sponsored an act creating a metropolitan police force in London. This was in the year 1829. These officers were called "Bobbies" in honor, or in derision, of Sir Robert. This was the foundation in England of orderly, scientific and professional law enforcement. The New York legislature, fifteen years later, in 1844, passed an act combining the night and day watch in New York City. Thus began the American city police system.

A number of things occurred during the past century which set back scientific law enforcement in America. One was the slavery dispute. This grew out of the failure by governors of northern states to grant extradition in cases involving escaped slaves.

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Our prohibition years also brought many set-backs, but it was during this era that the art of identification was developed. Bootleggers found names as plentiful as customers and it became evident that the only scientific way to identify a subsequent offender was by his fingerprints. So, during the past twenty-five years the Denver Police Identification Bureau has grown from nothing to a huge department.

With police identification bureaus came accurate criminal records, records of modus operandi, etc., and also scientific and modern police procedure. From a study of these criminal records, both locally and nationally, various startling conclusions now become apparent to us in Colorado for the first time. Their existence makes it possible for us to learn many things which must be dealt with in our agelong battle with crimes and the criminal. For instance, we find that during the last twenty-five years the police have increased their efficiency at least 200%, and we have police universities and schools throughout the country, scientific laboratories and trained technicians, and many well educated men on our police forces.

But our crime and penal problems are growing greater despite police efficiency. During the twenty-year period next preceding 1940 the number of persons convicted of felonies and detained in institutions doubled in percentage. In 1920 we had one felon for approximately every sixteen hundred citizens. In 1940 we had one felon to every seven hundred citizens, as revealed by our police records, in spite of the increased police efficiency.

The police alone cannot deal with such an increase because they are not the only ones directly concerned in the administration of criminal justice. Our penitentiaries, reform schools, courts and district attorneys are as much, if not more, concerned. It is in improvement of the records, personnel, administration and the procedure concerning these agencies that our greatest needs exist.

As Dean Roscoe Pound of Harvard Law School says in his scholarly article entitled "Toward a Better Criminal Law,"†

> "As one studies American criminal justice in action, it is evident that the four chief factors, personnel, administration, procedure, and substantive law, must be ranked in that order in measuring their influence upon the results * * * better mode of choice and tenure of judges, prosecutors and enforcement officers, better organization of courts, better administrative methods and more adequate administrative personnel must come first in any effective program of improvement. * * * An archaic procedure and patchwork criminal law, as all experience shows, will give better results,

†Reports of American Bar Association, Vol. 60, 1935.

if well administered, than the most modern procedure and well reasoned up to date substantive criminal law, if ill administered."

It is my opinion that there are four matters in which we can greatly improve the administration of criminal justice in Colorado without the necessity of much, if any, new legislation. In the order of their importance these are:

1. A better system for the sentencing of convicted criminals to attain equality of justice and rehabilitation of persons who are sentenced. The importance of this is emphasized by the fact that a committee appointed to investigate the cause of the bloody riots in the Colorado Penitentiary in 1929 found that a major cause of the riots was in disparity in sentences between inmates.

2. Action which will improve our method of releasing convicts and returning them to society.

3. Better records in our prosecuting agencies, courts and penal institutions from which accurate and scientific statistics may be compiled akin to those now available in our police record systems in order that we may obtain a better picture of our criminal problems.

4. Greater cooperation between all of our law enforcement agencies, and complete exchange of statistical information concerning their operations.

The reform of our system of sentence is the primary need. Consider these facts in Colorado: If the police spend great time and effort in apprehending a criminal; if the district attorney successfully prosecutes him; if the jury convicts him; and if his record shows him to be a chronic offender, and the court then imposes a one-year sentence (which actually means seven months and twenty-two days) in our penitentiary, it is hardly worth while and crime is but little discouraged.

This same prisoner then enters Canon City and will undoubtedly meet an offender who has committed the same type of offense, who has no previous criminal history, but who has received a sentence two or three times as severe as the habitual offender to whom we first referred. They inevitably discuss their experiences in intensely practical language. They come to conclusions that may seem strange to us, but which, from their point of view, are not without considerable justification. Among these conclusions you will probably find these: That happenstance has more to do with the sentence imposed than the circumstances of the crime or the past conduct of the criminal; that the judge, in each instance, knew less about them than anyone else connected with the case; that their sentence was not imposed for any particular purpose save to detain them; and that the easiest way is the best way in securing an early release from the penitentiary.

These conclusions are bolstered by a survey of the records of offenders sentenced to the penitentiary from Denver during the ten-year

period ending July 1, 1943. This survey shows that forty per cent of all offenders, first, second, third or fifth, received a minimum one-year sentence. Considered in the light of the fact that the law makes the minimum sentence in some cases more than one year, plus the fact that all offenders sentenced to the reformatory (some of whom have prior felony convictions) receive the same sentence, you may conclude that two hundred fifty days or less detention is the average fate of a majority of persons convicted of felonies in Denver unless—he gets probation. A police judge with a violent disposition could deal out a more serious punishment to a defendant charged with an accumulation of violations of city ordinances and impose a more onerous and lengthy term in a county jail for such petty offenses.

This ten-year survey also shows that both reformatory and penitentiary failed to reform or make penitent eighty to ninety per cent of those sentenced.

No logical course of training for these offenders can be outlined or maintained until this business of sentences is ironed out and fully understood by all concerned.

Sentences should be long enough to serve some purpose other than to merely dispose of a defendant. They should be short enough not to destroy the potential good that can be accomplished, by resentment aroused in the sentenced. They should have a definite purpose—either the segregation of an offender for a given period of time in the hope that some physical or mental change will take place in him, or for a sufficient period to constructively train a defendant to be a better citizen upon release.

Discipline and self-restraint are best acquired by intensive training at useful work, and release from our institutions should be based on constructive progress accomplished and not upon mere negative behavior, such as a failure to violate prison rules or a failure to do anything wrong while detained.

While this is the most vital need, it leads naturally to the second, which I will discuss briefly before returning to the first.

When a prisoner is released he should be given a fair chance to work his way back into the social fabric of the community, and our antiquated system of giving him five dollars, a suit of cheap clothes, and a ticket to the place of his conviction is outrageous. Particularly in dealing with those prisoners—a majority—who are poor and friendless, some method of small pay at public work can and should be worked out.

This is particularly true because the present criminal problem is a youth problem. Statistics show the average convict to be sixteen to twenty-four years of age, of a poor family, and generally without a known trade or occupation. A majority of them cannot afford to hire

an attorney when charged, and all have been following a course of conduct, a way of life, that brings them into conflict with society and thus into the criminal court. This convict, by the word of some authorities, has committed at least twelve offenses before his first conviction takes place. This indicates that the path from good citizenship to the penal institution contains more than one step in the average case, although some defendants, in rare instances, are brought into court to answer for their first wrongful act.

The picture indicates that this typical convict, if properly handled, is potentially material for reformation and salvation.

The picture is obscured, however, by the fact that our penal institutions keep no accurate or complete records showing the end result of their efforts. You cannot tell from their records, without a complete and exhaustive survey, how many of their former inmates are in other institutions, or have failed to make good. Our reformatory records are grossly inadequate, and small effort has even been made to keep a record of inmates until the last few years. If a manufacturer could not tell you with accuracy from his records whether his product was good or bad, or his service effective or ineffective, you would not consider him quite normal, and certainly he could not succeed.

This illustrates the third need which we outlined, and which will be discussed more fully.

On the constructive side of the sentencing problem we must first consider our state reformatory act, which is wide and comprehensive. Under the rule making powers vested in the governor and delegated to the warden, a complete program of rehabilitation and education could be installed without further legislation. Prisoners could be kept in Buena Vista until they have acquired a reasonable amount of training which may enable them to hold a position upon release, or long enough at least to acquire an apprenticeship in some trade. They should, and could, receive a reasonable amount of education, discipline and training which they cannot now receive under our arbitrary two hundred fifty day commitment. In some respects the same is true of our penitentiary.

In England, under the Borstal System, when a young offender is sentenced for a course of training, the judges generally retain jurisdiction over the defendant and his case and do not make a specific commitment until after approximately six months elapse. The judges then, on the advice of the people conducting the institution, and in the light of other facts as to the length of time probably necessary for rehabilitation or training, make the sentences definite. This might be constructive as a basis for our treatment of young offenders sentenced to Buena Vista.

As to older and more hardened offenders committed to our penitentiary, it might be asked why district attorneys do not file against repeating offenders under our habitual criminal statute? The answer

becomes plain when we see that the present act only includes seven offenses, and does not operate upon such crimes as grand larceny, forgery, and many others that are the most often committed by repeaters. We need a new habitual criminal act that will embrace all felonies because all penal authorities agree that a person convicted three times of separate felonies, committed on separate occasions, needs a long sentence.

The problem of definite sentences has always vexed the minds of men, and no one has ever found a very satisfactory remedy. However, there are some things that can be done to improve our present method. We have followed a drifting policy and have done little besides talk about settling the problem.

Some states have taken away entirely from the trial judges the particular duty of imposing definite sentences in all felony cases, and have reposed it in a board. In California a judge, for all practical purposes, merely enters a judgment in accordance with the terms of the statute which fixes the minimum and maximum sentences. Later the defendant is called before a board and his release is fixed by it for a later time in accordance with its notion. The defendant must serve the minimum sentence before he can even be considered for release.

This system, however, has not worked with entire satisfaction because of favoritism alleged to have been exercised by the board without regard to the merits of the case, and other attendant evils.

Before we in Colorado go that far it is well for us to consider bettering our present system. A practice has grown up in our courts by which the trial judge considers only the evidence given on the trial in pronouncing the sentence, without regard to any other information which may be available. Sentence has been called a distinctly judicial function. I do not know where that idea came from, but when we consider the judicial function in a civil case we find that the judge must hear every bit of evidence tendered, which may have a bearing upon the issue, before the amount or the nature of the judgment can be determined by him. Why should not the same be true in a criminal case where a person's life and liberty are at stake?

It is equally important to know all probable consequences of a sentence before its imposition. I, therefore, can see nothing wrong in defendant's counsel outlining the entire history of his client to a judge in arguing for a light sentence; or, conversely, in the district attorney presenting all the facts that he knows, or can find, relative to the case. I can see nothing wrong even in the court appointing a third person to make an independent investigation of the crime, and the person charged, and then allowing the defendant a full chance to contradict the findings of the independent party. We do not need legislation to allow a judge to obtain all facts which may have a bearing upon the judgment he is

to render before sentence, so long as there is nothing concealed or unfair in their presentation. The principle of fair play should prevail, of course, and that should be the only limitation upon any party concerned.

Some of our most enlightened jurists have taken this view of the duties of the court. The late and great Justice Benjamin N. Cardozo, in his "Paradoxes of Legal Science," at page 125, says:

> "* * * Courts should feel freer than they have hitherto felt to inform their judgment by inquiry. On the other hand, the very need for such inquiry is warning that in default of full disclosure of the facts, there should be submission, readier than has sometimes been accorded, to the judgment of the lawmakers. The presumption of validity should be more than a pious formula, to be sanctimoniously repeated at the opening of an opinion and forgotten at the end."

Justice Oliver Wendel Holmes used this language in the celebrated Chastleton Corp. v. Sinclair case, 264 U. S. 543, at 548:

> "We repeat what was stated * * *, as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. But, even as to them, a court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. * * *"

In many instances we have a young man to deal with who, due to parental neglect, has been virtually raised in public institutions. He has thus acquired quite a record which, when closely examined, indicates merely that he never had a chance to learn anything which would enable him to earn a livelihood, or to make something of himself. This should be considered.

A judge is not necessarily an expert on criminology by virtue of his office, any more than he is an expert in engineering, medicine, or the manufacture of automobiles. If he properly evaluates the evidence and the circumstances presented to him, he has done very well. In other words, I believe in a fair sentencing system whereby these facts are all laid before the court:

> 1. The course of training available for the defendant in our institutions, and the length of time that the average man needs to complete that course of training.
>
> 2. All facts which may indicate the adaptability of the defendant to that course of training.

If necessary, the court should retain jurisdiction of the case until each and all of these facts are learned.

There is nothing new in this proposal. It is what the federal courts have attempted to accomplish in their jurisdiction. It would in no way

interfere with the judicial function, but would tend to make it more symmetrical and effective. It would establish a cooperative process akin to our present probation operations in Denver under which only about 13% of those granted probation violate its terms during the probation period.

The third and fourth needs outlined are more or less entwined.

It is from our improved police records that we can draw salient facts concerning our crime problem today. If this improved bookkeeping should be extended to the other departments involved in the administration of criminal justice, we would, in the course of a few years, vastly improve that administration. Criminal administration requires a singleness of purpose and unity of action by all concerned therein: the police, the district attorney, the judges of the courts, and those in charge of our penal institutions. Improved records of all of the activities of these will lead to vastly increased common knowledge and unity.

The old saying, "When thieves fall out honest men get their due" is reversed when officials administering justice oppose each other, fall into controversy because of lack of mutual accurate knowledge, or fail to cooperate. Then thieves reap their harvest. All parties engaged in the administration of criminal justice are allies of either the law or the lawbreaker. There is no middle ground.

If all follow the law and the sure common experience with reasonable discretion, the job will be done. If each follows his own prejudices, peculiarities and beliefs, which are not based upon study of accurate criminal statistics, justice will be poorly administered, if not thwarted. Complete, accurate and scientific record systems will promote cooperation.

No system of criminal justice can be effective that is not under constant investigation and study. More detailed, accurate and scientific records must be kept by our police agencies, our district attorneys, our judges and courts, and our prison officials. All of these should be brought to light in reports and surveys at least once each year, and subjected to fair criticism in order that changes may be made from time to time in the operations of the system as the experience gained indicates.

Unfortunately, with us, the most discussed criminal problem is the question of pardons and paroles, but it does not merit public attention and is really a minor problem in the field. Out of the thousand prisoners confined in the penitentiary approximately six hundred have only a few months to serve. They are thus removed from consideration for pardon or parole by this fact. There cannot be more than two or three hundred that should be considered for a reduction of sentence.

The powers of clemency are vested in the governor, an elected official responsible to the people, by our constitution.

I believe little benefit can be derived by the appointment of a board to tell him what to do, whose advice he may accept or disregard. A small amount of clerical help could investigate these cases and dispose of the advisory function. However, it might be handy for the governor to have such a board to absorb the grief that goes with the function, but this could be equally well accomplished by passing the buck to a competent clerk.

Presently, under our system, our governor writes to the judges and district attorneys when considering a pardon or parole, requesting their recommendation. After he receives these he does as he pleases. If the letter can be used to good advantage to explain his action in the case, he uses it, if not, he files it.

Relatively little legislation is required to effect the four improvements in criminal administration which I have discussed, and some others possible. Those which might be considered are:

1. A comprehensive habitual criminal act. It should be simplified to omit second offenders and should impose a heavy uniform minimum sentence for third offenders; it should include all felonies and not a specified few, and should make criminal records prima facie evidence.

2. An act permitting our courts to retain jurisdiction over young defendants for up to six months after remanding them to the institution in which they are to serve, before fixing the maximum term.

3. An act placing the reformatory and the penitentiary under one administrative head, say the attorney general, and integrating their activities so far as practicable.

4. Legislation creating a women's reformatory. This can be done by authorizing the Morrison school for girls to take those whom they see fit, for the training given there.

5. An act providing public work for which prisoners can receive some small pay upon their release from the penitentiary, and abolishing the infamous "$5.00 and a suit of clothes" practice as the sole start given in a new world for the penniless inmates upon their release.

6. Legislation, appropriations at least, to establish a training and educational program along modern lines in our boys' reformatory, and legislation giving a fixed term instead of an indefinite sentence, as now. This "indefinite sentence," by the way, is in fact very definite presently—it is the minimum possible.

I present no panacea for the cure of ailments afflicting our administration of criminal law. That additional facts are needed and desirable I am certain; that conditions which cry out for reform are present is apparent. Their cure must be the result of carefully considered action on a cooperative basis between our law enforcement officers, prosecutors, courts, penal institutions and our legislature.

To again quote Dean Pound,

"We * * * have all but left the field (the reform of our criminal law) to enthusiasts and cranks and charlatans * * *.

"* * * Research in criminal law and procedure must go on cooperatively with research in the whole field of criminal justice—criminal investigation, police and preventive criminal justice, prosecution and the organization of criminal tribunals, * * * the causes of crime, physical, social and economic, and penal treatment * * *."

In the interest of common humanity, better protection for ourselves and our property, and the preservation of our fundamental rights, I feel that some action is necessary. It would be a privilege to assist the bar in securing an improved criminal administration in Colorado.

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