

Prison Reform*

by Judge Charles R. Richey

Prison reform is one of the most fashionable topics of the day. Almost everyone agrees that there is a need for reform but the type and manner of reform in our criminal justice and correctional system is still the subject of great debate and conflicting points of view. I think the Bar Association of the District of Columbia should be congratulated for arranging this program because the topic is not only timely but one of vital concern to the public and to the Bar.



**Judge
Charles R.
Richey**

I recall a remark by the Chief Justice of the United States which appeared on the back of an issue of the *American Judicature Journal* about two years ago which said something to the effect that a visit to a prison will make the visitor a zealot for prison reform. I have been interested in this subject for many years—long before coming to the bench, and, therefore, last July during my vacation I arranged to tour 9 federal institutions under the jurisdiction of the Federal Bureau of Prisons. I came away with a tremendous amount of knowledge which has been of invaluable assistance to me in exercising my sentencing responsibilities as a trial judge. Later I will give you some of my impressions. However, I would like first to provide you with some of the highlights of our prison system in this country from its beginning to the present date.

In the early days of our country it is interesting to note that by contrast with the gallows and floggings of England and other countries the word prison was first regarded as an instrument of humanitarianism. The new word was "penitentiary." Today the new word is half-way house or community treatment centers. The prisoners were not to be maltreated. There was to be food, light, clothing, exercise, ventilation, religious in-

* Remarks of the Honorable Charles R. Richey, Judge, United States District Court for the District of Columbia at the February 1973 meeting of The Bar Association of the District of Columbia, Shoreham Hotel, Washington, D. C.

struction. The religious influence of the Quakers predominated in the beginning. The Quakers, along with such civic leaders as Benjamin Franklin, Benjamin Rush and William Bradford, set forth a body of principles of justice for America which I submit are still applicable today:

“Our obligations are not cancelled by the crimes of the guilty.

“We must extend compassion to the guilty.

“The links for binding the human family together must under all circumstances be preserved unbroken—there must be no criminal class.

“Such punishments may be devised as will restore them to virtue and happiness.”

Notwithstanding these lofty ideals and goals, New York State established between 1821 and 1823 a new element in penology which provided that the whole prison population would have to work to turn out products for state profit. The alternative was the return to the lash. Unfortunately, this set the pattern for many of the states throughout the rest of the country. For example, in San Quentin men were tied stark naked to ladders and whipped into insensibility. Prisoners were jetted with spouts of water played point-blank on their faces until blood poured from their ears.

Finally, after the Civil War the country seemed to agree that prison atrocities ought to be checked. President Rutherford B. Hayes during his term as Ohio's Governor in 1870 invited 130 delegates from 24 states and several foreign countries to a National Prison Congress in Cincinnati. The man who moved to the forefront of the National Prison Congress was Zebulon Brockway, a professional prison administrator who had a massive beard that was already turning white at the young age of 43. He was the warden of the Detroit House of Corrections and highly regarded for his ability to run profitable industries. He persuaded friends to offer jobs to men discharged with good prison records and he agitated among lawyers for the indeterminate sentence. As a result of Brockway's leadership, the Prison Congress adopted a declaration of purpose—“rehabilitation, indeterminate sentences, credit for good be-

havior, education for all prisoners—both vocational and academic, no more brutal treatment, even cultivation of the inmates' self-respect.”

Notwithstanding Brockway's noble idealism, the prevailing penal philosophy until recent years has emphasized custody as the overriding purpose of the prison. Little or no thought was given to rehabilitation. Prisoner movement was strictly regimented. Food was monotonous, dispensed from buckets and bathing was a once-a-week occurrence. Recreation privileges were granted only on weekends.

President Nixon's Directive

The Federal Bureau of Prisons resulted from an act of Congress signed into law by President Herbert Hoover on May 13, 1930. We all know that much progress has been achieved since then and that many problems remain to be solved. In recognition of the deficiencies in our nation's correctional system, President Nixon on November 13, 1969 issued a 13-point directive to the Attorney General requiring the development of a ten-year master-plan to correct the existing deficiencies of our nation's correctional program. The major elements of the plan included:

1. Increased emphasis on the development of a professionally trained staff;
2. Development of correctional programs relevant to a changing society;
3. Increased development and utilization of research and evaluation capabilities of the residents of our institutions;
4. Provision of facilities to meet present and future requirements;
5. Expansion of the Federal Bureau of Prisons' program of technical assistance to State and local correctional systems.

The urgency of the implementation of the President's program is illustrated by the facts which appear in former Federal Prison Director James V. Bennett's book entitled *I Chose*

Prison which was published in 1970. Mr. Bennett points out that every day more than 1,250,000 of our citizens are paying their debts to society in prisons, reformatories, work camps, work-release programs, training schools, and clinics, or they are under parole or probationary care. Each year more than 2,500,000 people are admitted to this vast "corrections" population, and their care costs us an incredible one billion dollars per year. It is even more incredible to me that only one-fifth of this fortune is earmarked for rehabilitative programs.

One of the reasons for our problem in corrections today in getting sufficient monies to deal effectively with those who commit crime and hopefully to eliminate criminal tendencies is because society makes conflicting and contradictory demands upon our corrections and criminal justice system. A large body of men believe that convicted felons should be punished severely so that others will be deterred from committing crimes. At the same time, society wants men to be rehabilitated while in prison, so that they might return to useful positions in the community. In other words, it is not simplistic to say that society generally wants our men and women who have been incarcerated to be taught to use liberty wisely while deprived of it.

It is this background and the conflicting and contradictory demands of society just described, which faces every trial judge in the land, when he is called upon to exercise his most awesome and difficult responsibility, which is the matter of sentencing those convicted in his court of violations of our criminal laws.

While a judge, at least on the Federal level where he does not have to run for election, does not represent any constituency, he or she still does and must serve the public. And public opinion has arrived at no real consensus concerning the basic purposes of corrections. In 1972, for example, there were 1,600,000 convicts under current correctional controls ranging in degree from occasional supervisory interviews to penal measures of great severity. The prevalence of the crime rate has proven that deterrence is not solely effective—whether because punishment is not severe enough or not certain enough or because the concept is faulty. And high rates of recidivism show that traditional rehabilitative efforts have failed

and that prisons and reformatories appear to reinforce criminal inclinations.

While great strides have been made on the federal level which houses some approximately 22,500 offenders, at all times of the year, the issue can no longer be cast aside because the number of habitual criminals is growing too rapidly to permit further evasion. The entire correctional system is in need of drastic reconstruction. Intensive research may yield clearer directions over the long run but pending such results pragmatism would dictate this guiding principle which has been cogently stated by the Research & Policy Committee of the Committee for Economic Development in June, 1972: "rehabilitative effort should be maximized in every aspect of the correctional apparatus, while the loss of personal freedom should be used as a deterrent only under constructive conditions emphasizing ordinary human decency and avoid punitive degradation."

I have great hope for the new research center at Butner, North Carolina which will open this year. This is the brainchild of the progressive Director of the Federal Bureau of Prisons, Mr. Norman Carlson. The need for positive and realistic reform is illustrated by the fact that at least some 97% of those now incarcerated will some day be released again into society, and, if their incarceration leads these unfortunate people to a more sophisticated life of crime then the potential damage that they may do in terms of loss of life and property is incalculable.

Nine Impressions

Before concluding I would like to outline nine major impressions gleaned from my visits to these various institutions last year which hopefully will provide a focal point for much of our discussion tonight. Some of these impressions are repetitive in part of what I have already said, nevertheless, the importance of the problem justifies their repetition here:

1. The high rates of recidivism indicates that a great deal is wrong with the correctional system as it exists today; and
2. The increase in our crime rate indicates that the possi-

bility of imprisonment is not necessarily a deterrent to criminal conduct; and

3. Vocational training in prisons and in the communities should be made more relevant to the needs of society and the capacity of prisoners to assimilate; and

4. Upon completion of prison sentences there should be no discrimination against former offenders regarding work, education, voting and other civil rights; and

5. Immediate steps must be taken, at whatever cost, to insure that our prisoners while incarcerated are free from

(a) racial discrimination;

(b) free from physical and mental brutality; and

(c) the right to adequate diet, clothing and health care must also be adequately available; and

6. Prison personnel must be better trained as well as better paid; and

7. Present statutory minimum sentences should be drastically reduced, particularly where they are not related to a legitimate social purpose; and

8. There is a need to revise our present parole system so that the matter of parole is governed by more precise standards and that the area of discretion in regard to parole must be limited substantially. Moreover, when parole is denied the person should promptly be given very clear and concise reasons based upon a hearing record which demonstrates and articulates a rational and meaningful basis for the Parole Board's decision; and

9. There is a need for reliable and competent research in the area of what may reasonably be expected to be accomplished by the social, medical and psychiatric experts in terms of treating people for what in all too many cases now is termed criminal behavior.

The foregoing does not exhaust the list by any manner of means. But I trust these impressions and this background as well as what the others tell you will augment your present knowledge to the end that the Bar and its friends can better assist us in the criminal justice system and those in the field of corrections to do a better job for the public we serve.

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