The Twelfth Annual Law School Fund

It is possible to take great pleasure in certain kinds of monotony. To be able to state again that the Annual Law School Fund Campaign exceeded its goal, and that it set new records both for the total amount contributed and for the number of donors, is certainly such a pleasure. The Twelfth Campaign, which concluded last autumn, resulted in a total of $151,092, from 1,659 contributors.

General Chairman of the Campaign was Richard H. Levin, JD'37. William G. Burns, JD'31, was Chairman for Class Organization, Herbert Portes, JD'36, Chairman for Major Alumni Gifts, and Richard F. Babcock, JD'47, Chairman for Non-Alumni Giving (strongly assisted by Arnold I. Shure, JD'28 and Morris I. Leibman, JD'33).

Mr. Burns has agreed to act as General Chairman of the Thirteenth Annual Campaign. Advance gifts to that Campaign have already provided about one-fourth of its goal.

Research, Punishment and Rehabilitation

By Norval Morris

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The article which follows was excerpted from a longer paper called "Prison in Evolution," which appeared in Federal Probation, Volume 29, Number 4, December, 1965, and is reprinted here with the permission of that journal and of the author. In the original paper, Professor Morris first examined the broadening range of available penal sanctions other than imprisonment and the steadily increasing use of such alternative sanctions. He then discussed changes in the concept of imprisonment itself, including the growing variety of penal institutions and the increasing flexibility of approach within such institutions. Finally, in the section appearing below, he turned his attention to the problems and potential of research in this area.

If the above analysis is broadly true, if it is true that we are developing and increasingly applying penal sanctions differing widely from the traditional prison and that prison itself is in a state of flux moving towards a wide diversity of penal sanctions, there are many consequences of policy and practice which should be considered. For example, the task of the prison officer is suddenly one of much greater complexity than the maintenance of security and discipline; inevitably he becomes part of a larger correctional process with institutional and noninstitutional facets, and should play a difficult rehabilitative role in a complex therapeutic community. And he must be better trained and better paid for these tasks. Similarly, there are consequences for the organization and administration of correctional services.

If the above analysis be correct, the pressure towards the consolidation and regionalization of correctional services is great. Only with some administrative consolidation is it practicable to achieve sufficient flexibility of moving criminals through the various institutional and postinstitutional phases of their treatment and of timing their progress and release. Each of these points merits protracted consideration, as does the relationship between the above analysis and the deterrent functions of criminal sanctions, both on the criminal and the community at large, and that between the realities of criminal sanctions and community expectations of and attitudes toward punishment. But not all such implications of the thesis I have offered can be discussed here; one is selected for brief mention because of its importance. We must, in a planned and determined way, commit resources to discovering which of our evolving armamentarium of penal sanctions are effective with various categories of offenders. We must start the important research task of evolving treatment and rehabilitation taxonomies of offenders.

Correctional practices must cease to rest on prejudice, surmise and good intentions. We are under a moral obli-
gation to use our best intelligence to discover whether and to what extent our various penal sanctions serve our purposes—in particular, to deter and to reform.

Knowledge of Deterrence.—We have some knowledge of the deterrent effects of certain punishments. It has been repeatedly demonstrated that capital and corporal punishment, for the types of crime to which the conscience of the community is prepared to apply them, do not deter any more effectively than other less brutal sanctions. Most states have acted on this knowledge. There remains, however, a vast ignorance of the differential deterrent effects of our other penal sanctions on the convicted criminal and on the rest of the community. We continue to impose deterrent punishments without bothering to ascertain what effects they have. Such slight evidence as there is indicates that we tend to exaggerate their efficacy.

Knowledge of Reform.—Even less is known about the reformatory effects of our penal practices. We preserve this ignorance in two ways. First, we do not look for such knowledge, with the result that the value of reformative efforts can never, with propriety, be attacked; their success is never tested, it is merely assumed. And this has, indeed, been a defect in the presentation in this article of the alternatives to and developments from prison. It has been presented with a bias against the traditional prison and in favor of the sanctions that are supplanting it; and this bias, inevitably for the time being, lacks firm scientific validity. Secondly, such minimal research into the effects of our correctional practices as takes place is pursued by research methods of such naivete that valid results rarely emerge. There are, of course, exceptions to this second proposition: Mannheim and Wilkins, Prediction Methods in Relation to Borstal Training,* is an obvious exception, as is the developing work of the Home Office Research Unit, particularly in its probation project. And in the United States there is the evaluative research of the California Youth and Adult Authorities, particularly into methods of parole supervision, and the probation study of the School of Social Service Administration of the University of Chicago in collaboration with the federal probation office at Chicago. But in relation to the need, there is no overstatement; we maintain our ignorance either by not searching for knowledge or by searching by methods that cannot disturb our prejudices.

Perhaps it is fanciful to suggest a deliberate suppression of truth. Possibly our lack of knowledge is to be attributed to intellectual sloth combined with a scarcity both of people interested in criminological research and of sufficient funds for such work to be pursued. After all, people become interested in this work largely for humanitarian reasons, and this applies as much to the trained social worker as to the lay volunteer. It is not sensible to look to such people for critical, methodologically sophisticated assessments of their own work. But no such excuse can be offered for senior officials in many departments of prisons and corrections who use substantial community funds and considerable resources of personnel in the treatment of criminals, without insisting upon research that evaluates what they are doing. The demands of sound business practice alone should have led such departments to test critically the marginal return, in crimes prevented, from each successive reformatory technique applied or extended. It is obviously wise business practice to try to discover the return from your investment. When the investment is in the happiness of law-abiding sections of the community, the prevention of social suffering, and the confidence of all people in their physical safety and the protection of their property, such an effort is overwhelmingly necessary.

Towards a Treatment Nosology.—Criminological re-

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*Part VI of The Sentence of the Court, fn. 4 above, is an excellent summary and critique of present knowledge concerning the results of various punishments imposed by courts in the United Kingdom.
search has been too long concentrated on the search for that will o' the wisp, the causes of crime, and much too little attention has been given to research into treatment methods. If the evolution of criminal sanctions is to be adapted to the needs of community protection, the evaluation of different correctional methods is essential, and of various techniques and practices within those methods in their application to different categories of offenders. In short, we need gradually to develop a treatment nosology of offenders. We must know which of our available methods work best with a range of classifications of types of criminals.

When Gil Blas joined the medical profession he was armed with the alternative remedies of bleeding or drenching. All authorities agreed that these were medically sound and effective treatments, and established diagnostic techniques, backed by a considerable literature, facilitated the important choice between them. Critical evaluation of their true effects faced active opposition from the conventional wisdom. The situation is not dissimilar in relation to current penal practice.

Many followup studies have sought to determine the different rates of success and failure of different treatment measures applied in the same locality, but few seek to relate the twin variables of the type of treatment and the type of criminal to the likelihood of successful treatment. If we find that treatment A "succeeded" with group Y in so many cases, and treatment B "succeeded" with group Z in so many cases, we have a narrative and not a functional relationship. There are too many unexpressed variables at work for this type of research to be regarded as a critical comparative assessment of treatment methods.

There have been a few efforts at more direct evaluative research. Two pioneer projects were the Cambridge-Somerville study,10 and the Highfields study.11 Both encountered severe methodological difficulties, but both confirm the economic and social value of such evaluative research. Further studies of this nature have been conducted by the United States Office of Naval Research,12 and are being pursued by the Home Office Research Unit and by the California Youth and Adult Authorities.

The Clinical Trial.—In the long run, effective evaluative research demands clinical trials, and even the methodologically sophisticated techniques of association analysis and predictive attribute analysis13 cannot avoid this; and clinical trials themselves raise important and difficult issues of principle.

In medical research the clinical trial is well established and has proved of great value in the development of therapeutic methods. Where there is genuine doubt as to the choice between two or more treatments for a given condition, efficient experimentation requires that the competing methods be tested on matched groups of patients. The new treatment will be given to one group of patients while the traditional treatment will be given to another group of patients matched so far as possible in all clinically significant respects with the first group. A careful followup of the success of the two treatments then gives a foundation on which further testing will provide secure knowledge, when statistically significant differences are found and validated, upon which the new treatment may be used.


The Honorable Walter V. Schaefer, JD'28, Justice of the Illinois Supreme Court, left, who presided, congratulates the Honorable Charles Breitel, Justice of the Appellate Division, New York Supreme Court, on his speech to the entering class.
be accepted, rejected, or modified. Frequently the new treatment, even if found to be of therapeutic value, does not entirely supplant the old. A common result is that for certain types of conditions within the group being tested the new treatment is found to be more effective while for others the previously established method for the time being is to be preferred. And thus, gradually, and in relation to defined conditions, treatment methods improve and are more selectively applied.

We should, in like manner, experimentally control some criminal sanctions in the cause of the advancement of knowledge and the rational application and development of correctional methods. We should subject criminals of similar personality structures, home backgrounds, and environmental circumstances to deliberately different methods of treatment; unless we do, we shall have no more than reasonably cogent surmises to guide us; unless we do, we shall continue to lack the minimum knowledge necessary for developing a rational correctional system from our present diversity of sanctions consequent upon the abatement of imprisonment.

Typically, a clinical trial involves defining a group of criminals by age, sex, offence, personality, and home circumstances, the absence of any gross psychological abnormalities, and their rough suitability for two (or more) alternative methods of punishment. Then, as such come forward as convicted offenders, to subject them to these alternative treatments guided only by the demands of a random sampling process (or possibly a more sophisticated stratified matching technique). At the stage of input, extensive information about them and their correctional treatment is obtained; thereafter their relative success rates are assessed and by association analysis information emerges concerning the suitability of various subgroups within the larger group for the two treatments. This result itself requires validation and retesting by further clinical trials, and thus the twin variables of criminal and treatment are gradually related.

Clinical Trials and Human Rights.—The analogy between the doctor's "treatment" and that court's or penal administrator's "treatment" is imperfect. The subject of medical diagnosis is better defined than is the social disease of crime, and in the former the patient consents to treatment while the criminal does not. Problems of abuse of human rights thus obscure when it is sought to apply the clinical trial to correctional practice. It is justifiable to impose a criminal sanction guided by the necessities of research and not the felt necessities of the case? Emotionally a negative reply is appealing, but it is submitted that given certain safeguards an affirmative answer is wise and does not involve any abuse of human rights. First, we do not have to apply such methods at the stage of judicial sentencing; they can well operate within what the judge determines to be the just and appropriate sentence in every case. Secondly, by applying a principle which may be called, for want of a better phrase, "testing down," any abuse of human rights can be avoided.

Correctional sanctions already include the possibility and indeed the fact of wide diversities of treatment within the judicially imposed sentence. A defined term in "prison" becomes, as we have already seen, a commitment to possibly extremely different institutions with profoundly different reformatory processes and substantially different degrees of social isolation. A sentence of "probation" can lead to a close personal supervision or to the most perfunctory experience of occasional reporting. The range of subtratements within each correctional treatment is very wide—so wide that ample room for evaluative research and thus the entire process exists without interference with judicial processes. Of course, as information relevant to sentencing emerges from such administratively created clinical trials, it should be fed back into the judicial process and will then create yet new opportunities for further evaluative research.

By "testing down" I mean that the new treatment being studied should not be one that is regarded in the minds of the criminal or the community at large as more severe than the traditional treatment with which it is being compared. To take a group of criminals who would otherwise be put on probation and to select at random some for institutional treatment would risk an abuse of human rights; conversely, to select at random a group who would otherwise be incarcerated and to treat them on probation or in a probation hostel would seem to me not to risk any abuse of human rights. Within this principle it would be possible to develop all that we need for many decades by way of research evaluative of our correctional methods.

There are many methodological problems in evaluative research. One of the most intractable is to define precisely the treatment method that is being studied. Probation, for example, is such a potpourri of methods of social casework and individual control that it would be grossly unwise merely to compare probation with any other treatment. "Probation" is not a defined treatment; it is rather a convenient name for a considerable diversity of treatments. And there are other difficulties. But the method lies within our competence and the case for its application is incontrovertible if it be admitted that it is wise for us to seek to know which of our diversity of treatment and punishment methods best serve our various social purposes.

No new correctional practice should ever be introduced without the same time plans being made and applied for its critical evaluation. The purposes behind its introduction should be capable of formulation. Insofar as they involve any reformatory aim or any aim of special deterrence (e.g., the detention center), those aims can be tested. If a new reformatory method is applied without evaluating testing, it will very likely appear to be successful since
there will operate a strong tendency to apply it to those who in any event are the most hopeful offenders in terms of likelihood of reform. If we are not perennially to delude ourselves in this way, every penal experiment requires a concomitant evaluative research, with the new method being applied randomly within a defined group for whom it is thought to be a suitable sanction and who otherwise would have been dealt with more severely.

What is true of any new treatment method applies also to all existing treatment methods, and it is only the inertia of correctional practice that conceals this fact. It is foolhardy to risk a guess as to the cost of a research programme, independent of a close study of the realities of practice in the area to be studied; but, taking the risk, it is confidently submitted that if 2 percent of the annual budget devoted to applying our criminal sanctions, not including capital costs, were to be made available for research evaluative of those same criminal sanctions, it would be possible to attenuate those methods rapidly to social needs and within a very few years to diminish suffering from crime, to save a great deal of the present waste of human and financial resources in our untested correctional methods, and to produce a return, even in terms of finances, greatly in excess of the investment. Put more concretely: It is submitted, for example, that at present half the time of all probation officers is wasted by their services being applied to those who do not need them (and who should be bound over, or on suspended sentence, or supervised by other than skilled caseworkers) and those who will not respond to their efforts (and who need more forceful casework supervision than the average probation officer can provide); and that it would be quite possible in a few years of evaluative research greatly to reduce that wastage, and at the same time better to protect the community.

Research and the Evolution of Prison.—If the abatement of imprisonment is to lead to the rational selection of the methods that should collectively take over most of its functions in the evolution of criminal sanctions, an evaluative research programme must be supported; correctional administrators must come to see the research scholar as their ally rather than as an irresponsible critic, untroubled by the care and duties of office; and some research effort must be devoted to this type of research, of immediate practical value alike to those who have to create new correctional methods and to those who must make the difficult choices in the application of such methods as are already available. Criminological research must be directed to acquiring this type of information which must be regarded as of primary importance and not as a distraction from the frenzied search for causes. Ultimately, it is perhaps true that completely effective treatment presupposes adequate diagnosis; but the present treatment problem is pressing and important, the need for knowledge is great, and as in medicine, we can with

some success treat many conditions whose aetiology remains obscure.

Further, if research were directed to evaluating our correctional methods it would very likely, as has happened in medical research, throw up, as a byproduct, aetiological information of value to our more adequate understanding of crime and criminals.

Given our present rate of social change and the rapid developments in penal practice the case for empirical evaluative research of the type I have suggested is surely strong. Its acceptance may well be a precondition to wise planning for community protection.

A New Commissioner

The Governor of Illinois has appointed Professor Sota Mentschikoff (Mrs. Karl Llewellyn) a member of the National Conference of Commissioners on Uniform State Laws. The Conference, the purpose of which is clear from its title, was founded in 1892. It now consists of about 150 members, each of whom is appointed as a representative of his state, by the governor of his state. Professor Allison Dunham, of the University of Chicago Law School, is Executive Director of the Conference.

The appointment of Miss Mentschikoff brings to six the number of Law Faculty members who have served as Commissioners. Her predecessors were Ernst Freund, Arthur H. Kent, William Eagleton, George G. Bogert, and her late husband, Karl N. Llewellyn.
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