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## Some Notes on Criminal Justice<sup>†</sup>

BY HON. G. A. LUXFORD\*

When District Attorney James T. Burke extended the invitation to address you he said, "Oh, talk about anything you think will be instructive."

Giving instructions to juries is one thing, but to attempt to give instructions to this distinguished group of lawyers, district attorneys, judges and United States army officers—well, I am not so sure about that. Which reminds me of one spring on the ranch when we were building fence. One of the men said, "You know, anyone can set two fence posts in a row, but the hell of it is to line three of them up." What application that has here may soon appear.

All of us here today have a common interest, which is to see that the administration of criminal justice in Colorado is progressively conceived and executed in the interest of the public, the taxpayers, the bar, and those most vitally interested of all, the defendants appearing before the bar of our courts.

Personally, I have always regarded the law as a living, growing thing. Our government is not an edifice; it is an institution, and it has been said that institutions are but the lengthened shadows of men. Dean Pound has said, "Law must be static, yet it cannot stand still." And Justice Holmes concluded that "The life of the law has not been logic; it has been experience." And yet again, Justice Cardozo wrote, "The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for the morrow. It must have a principle of growth."

It has been said by eminent authorities that the criminal law has lagged in its development. Even so, looking at it across the years it has made slow but steady growth. Less than a century and a half ago there were 160 crimes under the English law visited with the penalty of death; and in 1801 a child of thirteen was hanged at Tyburn in free England for the larceny of a spoon.

We have come a long way since then. Now we all agree with what our own Justice Haslett P. Burke said, "The first duty of an appellate court is to make the law the thing which our ancestors believed it should be, an instrument for the promotion of human happiness and the doing of human justice."

It is my belief that since we have introduced the humanities into our administration of criminal law that crime has diminished and that our criminal population has decreased.

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<sup>†</sup>An address before District Attorneys Association, Colorado Springs, October 13, 1944.

\*Judge of the Denver District Court.

In Colorado in the past few years we have taken one more great step which has introduced humanity into the administration of criminal justice. I refer to our present probation statute, not perfect by any means, but nevertheless a wise and humane law, which, under proper administration reduces crime and the number of criminals, and which tempers justice with mercy, not only in the interest of defendants but of the people as well. The benefit of our probation statute is that it tends to reduce inexorably the number of habitual criminals of mature years, because it can, and does, divert and redeem scores and hundreds of youths from a life of crime, who otherwise have in the past, for the most part, adopted crime as a career after incarceration for first offenses. Our crime problem in Colorado, and in the nation, is a youth problem. It is a problem for law enforcement officers, lawyers, judges, and legislators.

United States Circuit Court Judge Ori L. Phillips says: "Reliable statistics demonstrate beyond possibility of doubt that the period of life between 16 and 23 is the focal source of crime. It is during that period that habitual criminals are spawned. Young people between the ages of 16 and 21, inclusive, constitute but 13 per cent of our population above the age of 15; but they are responsible for approximately 26 per cent of our robberies; they constitute in excess of 40 per cent of our apprehended burglars, and nearly 50 per cent of our automobile thieves. Boys from 17 to 20, inclusive, are arrested for major crimes in greater numbers than persons of any other four-year group.

"They are arrested for serious crimes twice as often as adults of 35 to 39; three times as often as those of 45 to 49; and five times as often as those of 50 to 59.

"Nineteen-year-olds offend more frequently than persons of any other age. Eighteen-year-olds come next. Moreover, the proportion of youths less than 21 in the whole number of persons arrested is increasing at an alarming rate. This tremendous upsurge of criminality during the youth period is a startling social phenomenon. It would seem, therefore, that we must wisely concentrate our efforts to prevent crime upon the offenders in the age group between 16 and 23 if we are to make progress in the solution of our crime problem."

Our probation statute applies only to first offenders, and hence principally to the age group referred to. That it has been beneficial, under proper administration, can be proven and not merely surmised. A ten-year survey made recently by District Attorney James T. Burke of the administration of probation in Denver shows these facts: 1152 persons were granted probation. Out of that number only 245 or 21% had their probation revoked. In other words, probation was a success in 79%, and 79% of the first offenders granted probation were redeemed to society as more or less useful citizens, with a consequent saving to this state of an incalculable moral value, plus many thousands of dollars

in cash, because of the reduced population of our penitentiary and reform schools. Reduce that to even 50% and probation remains a great and successful reform.

Why has probation been a success in Denver? Primarily, because there has been a complete cooperation between the police officers, the district attorney, the judges of the courts, and the probation officers who have supervised the administration of the law. Probation without wise, experienced, sensible and diligent probation officers who believe in the value of probation is apt to be a failure. In Denver, when an application for probation is made, an investigation of the applicant's life from the cradle on, is made by the probation department. His personal and family history is determined not only by what he says, but by what the record shows. His education, his church and social activities, school history, previous employment, marital status, and, in fact, his whole life, are surveyed through references which he gives, and through other sources. These probation officers are shrewd and practical men, some of them former police officers, but all with a great knowledge of life, and a faith in probation. When they recommend the grant or denial of probation, it is upon a basis of knowledge and not one of sympathy, prejudice, influence or hearsay. Most of the bad probation prospects are thus culled from the herd before probation is granted. This is essential. No man should have probation for any offense whose life, character and personality disclose that he is a bad probation risk.

In Denver our judges and the district attorney have almost uniformly followed the recommendations of the probation department concerning the granting of probation, and I believe this to be sound policy. Second, it is even more essential that the person once granted probation shall be supervised diligently. To grant probation and turn the man loose to return to his former associates, habits and temptations is folly. A probation officer must be firm, diligent and wise in order to make this supervision efficient, but I am convinced that it is the work of supervision by the probation officers which has made the administration of probation in Denver what it is.

I personally feel that on the basis of our experience in Denver that the probation officer should be an independent officer, not connected directly with the apprehension or conviction of criminals. It is a full time and not a part time job. Police officers usually make excellent probation officers.

What the experience over the state may indicate I do not know, but I do believe, and I think that you will all agree, although not perfect, that our probation statute administration in Colorado has resulted in a great step forward in the administration of criminal justice.

Opinions differ as to what further legislation could do to increase its efficiency. This is a field which should be surveyed carefully by those most interested in the forward progress of the law, and I refer (1) to the law enforcement officers of the state, (2) the district attorneys, and (3) the judges. This suggests another change in the administration of our criminal laws, and that is a *closer* coordination and cooperation between the law enforcing agencies, the prosecuting agencies, the courts, and the penal and reform institutions of our state. As the situation now exists, the police officer knows little or nothing of what becomes of the man whom he apprehends and charges, and his misunderstandings of what results in the next step of the process are manifold. No statistics on a state-wide basis are available to him concerning the percentage of convictions obtained by his efforts, the length of sentences, the percentage of probations, the time and number of paroles, or the final disposition of the case of the man against whom he testifies.

Similarly, the district attorney and the judge do not have available to them information which would indicate the result of their efforts to suppress crime or to reform criminals, for the direction of their future policy and efforts.

Under our present sentence and parole laws our judges, I fear in some instances at least, know not what they do when they sentence a man to the penitentiary for a term of from one to ten years. They do not know, in many instances, how long he may be incarcerated, and no statistics exist which would indicate what the average criminal does after his discharge. Until all of these various agencies achieve a central information and statistical organization which can fully inform all of the component parts of the business of law enforcement as to what their common problems are, and what the statistical results of their efforts are, confusion is bound to continue. A close coordination of information and statistics among our various law enforcement bodies would reveal many things which can be corrected or improved in the functioning of our law enforcement.

I believe that great benefit would come from the creation of such an agency, either by law or by cooperation among the state groups.

But certainly the greatest need for change in our administration of the criminal law is a complete overhauling of our sentencing and parole system in Colorado. Today when a judge sentences a man to from one to ten years in the penitentiary, it actually means one year, less a so-called "good time allowance." The man sentenced actually serves only a little over seven months. He then is entitled to release by law.

What to do about it? I have this belief, that the maximum sentence for a crime in this state should be drastically reduced. The minimum sentence imposed should be served in the penitentiary and no so-

called "good time allowance" should be awarded to a convict for mere negative, failure to do anything bad, while in prison. The minimum sentence should carry with it, by law, a provision that the man after serving the minimum sentence should be on parole for the same length of time and with the same sort of rigid supervision and constructive assistance *by parole officers* that is given to the person now granted probation. As our law now exists, the convict's minimum sentence is whittled down from the day of his incarceration so long as he fails to do anything wrong, and by law he is entitled to release at the conclusion of his minimum sentence, less the so-called "good time." He is then dumped out into the world with a new suit of clothes and \$5.00 and allowed, yes—frequently forced to return to the associates, the environment and habits which were his when he committed the crime for which he served.

The needed legislation should be drafted upon facts obtained from the combined experience of police officers, district attorneys, judges, state and federal, and the wardens of our penal institutions.

The report of the subcommittee of federal judges on the sentencing of adult offenders to the committee on punishment for crimes, appointed by Chief Justice Stone of the United States Supreme Court, says:

"Further, as a result of the studies we have made we have concluded that there is a type of disparity in sentencing which is unjust. . . . In dealing with the same crime by different individuals similarly situated, while disparity of sentence may be proper, there should be no shocking disparity. Judges who crusade against certain crimes which they feel disposed to stamp out by drastic sentences create unfortunate reactions, when such sentences are compared to less severe sentences for more serious crimes.

"It has been argued, what difference does it make if convicts are discontented? Granting that this question may not be satisfactorily answered—which doubtless is not true—nevertheless any action by the courts is wrong which is inherently unfair. The reaction of the convict is not the sole complaint; his family, his friends, and fair-minded persons in the public, the courts, and the penal system join to condemn that which on no basis can be justified as just and equal treatment."

And further, quoting from the same report:

"Undoubtedly in recent years there has been improvement in the method of sentencing in the federal courts. This has come about largely through the availability to the judge of presentence reports made by probation officers."

The committee recommends *inter alia*:

"2. Where the sentence, in the opinion of the judge, should be for more than 1 year, require that a sentence for the maximum

term be initially imposed, with power in the judge to modify the sentence later.

"3. Provide a board of corrections with power to make recommendations to the judges as to sentence in cases where sentence is for more than a year, but with power in the judge to fix the sentence notwithstanding the recommendation of the board."

Every judge intends that the sentence imposed shall be fair and just. Disparity in sentences does not necessarily mean injustice. Each case is an individual case, calling for such sentence as the facts warrant. The report of the federal judges above referred to recommends giving the judge full and complete information before final sentence is passed. No doubt every judge would welcome this.

This is a field which challenges the sincere efforts, the deep thought, and the hard work of every police officer, district attorney, and judge in the State of Colorado.

I believe that this group is properly qualified by experience, intelligence, and sincere interest to lead in the doing of this job.

We are called upon to do our part in an ageless process of administering justice today. Justice should be a strong and firm but also a humane thing. We now serve as public officers. Yesterday others served, and tomorrow still others will take up the work where we leave off. If through patient industry our service leaves the state a little better than we found it, then indeed will we be amply repaid.

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## Real Estate Title Standards†

BY EDWIN J. WITTELSHOFER\*

No greater opportunity has presented itself to the Colorado Bar Association in many years for beneficial and constructive service to the members of the legal profession as well as to their clients than will result from the establishment of uniform standards concerning the examination of titles, provided these standards are uniformly accepted and courageously applied. This is not mere fantastic thinking or conjecture, but is based upon the practical results obtained by the Denver Bar Association and the bar associations in other parts of the State where standards have been promulgated and applied.

Not only in our own state but in five or six other states like plans have been established and with like results. The Real Estate Section of the American Bar Association has given attention to this plan and last year the chairman of the Denver committee was invited to attend a meeting of that section at which time the plans was under discussion.

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†An address before Colorado Bar Association, October 13, 1944.

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