An Approach to Recidivism*

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The criminal lawyer, the psychiatrist and the penologist all share the problem of the recidivist. Broadly defined by these forensic professionals, a recidivist is any person who has been convicted more than once in our criminal courts and is likely to reappear there as a chronic offender. He is the unrewarding case for the lawyer at the bar, the obdurate subject for the psychiatrist, the main burden of the penologist. He constitutes the largest criminal statistic and is, as a corollary, the criminal least responsive to rehabilitation. Our preliminary approach to this many-faceted problem is the subject of this report. First, however, several legal, social and psychologic factors require mention.

The Background of an Approach to Recidivism

Recidivism involves the entire spectrum of the courts, the subcultures from which crime arises, and the correctional institutions where it is intensified. In general, the recidivist is marked as a failure of our system. Officials of the courts place too much emphasis upon extracting pleas and rendering formula-type pre-sentence reports and judgments. The judges, lawyers and probation officers who write the reports lack the time and resources to find out who the defendant really is.

Programs to counteract recidivism have traditionally been tried in penal settings after conviction and sentencing. The results can be judged by the fact that 70% of all offenders incarcerated by our courts are arrested for subsequent crimes within three years of their release. On the other hand, rehabilitation attempts outside penal walls through probation services are hampered by lack of a meaningful diagnostic analysis early in the process and by unrealistic case-loads heaped on probation officers for whom special supervision is impossible. Further, local mental health clinics, which normally employ staff untrained in forensic psychiatry, hesitate to deal with "hard core" recidivists.

Our approach to this problem sprouted into existence about three years ago when a 14-year-old California boy pointed a pistol at his father and shot him in the chest. He faced a felony charge. The boy had already been through the judicial system, first as a dependent child, then as a delinquent youth. He had been committed to state hospitals, but no meaningful personality or dynamic evaluation had been made. The public defender (co-author B.B.) moved that proceedings be suspended until a psychiatric study had been made. Through efforts of former foster parents, necessary funds were raised for a complete psychological study. As a result, the lawyer and the court had some idea of the underpinnings of this boy's behavior. He was subsequently treated by confrontive therapy in a special adolescent program, with excellent results and a remote likelihood of further recidivism.

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The diagnostics of which we speak consist in a personality analysis, including the cultural and subcultural influences and identifications, an estimate of intelligence, and an estimate of emotional dynamics. Such analysis obviously extends beyond the narrow legal purposes of determining the defendant's sanity at the time of the offense or sufficiency to stand trial as set forth in the California Penal and Welfare codes. Unless the defendant is wealthy or has other financial backing, such careful study is impossible. In California, under Penal Code Sec. 1203.03, where psychiatric study is provided in a prison, experience shows that inmates attend several group sessions containing about 30 inmates, and are exposed to one interview with a psychiatrist or staff psychologist, during their ninety-day observation period. Understandably, most governmental agencies are interested in custodial considerations: is the risk of repetition of an individual's offense slight enough that his probationary or parole supervision in the community would be feasible? A more thorough-going program to "condition the prisoner socially" is obviously not feasible under present conditions.

The Inadequacy of Punishment

Larger considerations in our approach to recidivism must be faced before our plan is outlined. These involve mainly the issue of the punishment which the law requires of convicted felons. The practical aims of punishment are deterrence and rehabilitation, after society's disapproval (reprobation) is satisfied by incarceration.

To speak of imprisonment as an effective deterrence among recidivists is to indulge our altruistic fantasies. The repeater does not and will not identify himself or herself with an idealized attitude. He, and the experienced professionals dealing with him, know that rehabilitation in prisons is merely a pious hope. This is so because the meaning of imprisonment, i.e. the equation crime-punishment, stands on traditional moral grounds.

No one questions its pertinence in law, no one gainsays its position as a fundamental right of parents on the family hearth. Punishment is an automatic corollary of the Ten Commandments. Yet it is increasingly apparent during the last decade that punishment has lost its sting. For many of our juvenile repeaters, the reprobation of society represents a soft hand on the shoulder, a paternalism to be merely tolerated. Insensibly, during the past decade or two, not only has punishment lost some of its moral force, but also, as a parallel phenomenon, crime has ceased being an "evil."

Crime has become "misbehavior." This semantic change, correlated with our dynamic understanding, has had an effect on the value given to punishment. The pain of punishment is discounted, and the moral thunderbolt hidden within it appears as flat as last night's champagne instead of as strong as today's bitter medicine. Signs of this re-evaluation of punishment are seen in the oncoming generation on all sides—militants will not take discipline easily or submit to punishment without comment; erring juveniles laugh at school suspension as punishment or accept Juvenile Hall detention as a sign of successful growing up; there is a steady attrition against the death penalty throughout the country; life imprisonment means 13 years, even 7 years in many jurisdictions. But more importantly, the civil rights movement has made crime less of an evil and more of a common experience; less an injury to the body social than an assertion of an inherent right.

The downgrading of feelings against legal wrong-doing and the minimization of punishment, initiated in the main by the oncoming generation, have softened the rigid division of criminals from the law-abiding population. No longer is criminality projected to the "criminal class" defined as the lowborn, the illiterate, the other-side-of-the-track citizen. Aggression in criminal areas has been democratized. This subtle change in orientation of values has been subtly reflected in the attitude of prisoners toward punishment: by some, "misbehavior" is worn as a badge of honor rather than the mark of Cain.

Like sex, aggression has passed through certain phases of liberation during the period of its democratization. Just as many varieties of sexual expression are now accepted as normal, so the expression of aggression has been accepted as an approved human quality. Hence enforced punishment in penal institutions is viewed by inmates as a misuse of time, a temporary encumbrance, an example of the stupidity of the senile, impotent wrath of the establishment. Irritation, anger and sullen defiance can be read in the attitudes of prisoners before the bar, and the moral weight of a judicial sentence fails to affect the conscience of many of today's offenders.

This direction of thinking—and contact with wrong-doers of all ages and psychic complexions proves its existence daily—has led us to try to work with recidivists *outside* of penal institutions. The program to be described has its roots in the accepted procedure of referral of defense lawyers' clients to psychiatrists for evaluation.

A Program for Criminal Diagnostics

The Criminal Diagnostic team, as we have called it, has processed 24 cases during the past two years. Unfortunately, many cases that could have benefitted by this procedure were lost in the vast judicial and correctional machinery because of a lack of private or public funds. We have a long-term plan, pending adequate grant funds, to work with hundreds of cases in a five-county area in Northern California.

The essential innovative aspects of our plan are:

1. Earliest possible evaluation and a tailored therapeutic program will be offered *within* the community where the offense occurred.

The recidivists' community, with all its sub-cultural pressures and resistances, will be used because of the *advantages* offered by a sub-culture with its family presence, friends and community worker groups.

2. The psychiatric and psychologic diagnostics will be expanded to include reading ability and vocational aptitudes.

3. The therapy offered will include not only the usual counseling, but also regular Marathon therapy, which employs direct confrontation, lateral participation and critique.

The Marathon will be obligatory. Its important features are (1) therapists are participants in the group, and (2) the feelings and critique of peers (group members) are brought into play. Hence more than lip service is given to the ideas of psychological and social motivation. Reading of body language is emphasized to prevent distortion of feelings through verbal communication. The prolonged period—12 hours—reduces evasions and denials. Food is liberally offered. The lowest common denominator is the "human-ness" of each participant. Strict honesty is expected and demanded.

4. Literal bombardment by exposure to special TV presentations on closed circuits, presented to a group of recidivists, will be used. Film production by professionals will be down to earth; a virtual depiction of what happens to the recidivist, done in dramatic terms, will be shown over and over to the group.

The principles of manipulation and advertising will be employed. Films will be shown in the treatment headquarters, local schools, and other social organizations.

The main feature of the method is a discovery by the recidivist of his own personality assets and liabilities and a far from subtle (Marathon and film presentations) offering of other approaches to a life pattern. This process involves psychologic manipulation, about which some discussion is in order.

Manipulation as a psychotherapeutic methodology or technique is grounded on the aim to help others modify their wishes, tendencies and habitual behavior modes through obvious or indirect management of patients. The arranging of situations in group therapy is for the purpose of providing opportunities for insight via confrontation among the patients when that insight would not otherwise be visible. Sometimes these manipulations appear to be random or spontaneous to the patient, sometimes they are recognized as contrived. Needless to say, they are contrived by the therapist, whether delivered as a

subtle comment, as a broad situation arrangement like play therapy, as psychodrama, or as Gestalt "chairing" maneuver.

The use of manipulation by psychiatrists is part of a calculated plan to resolve resistances and to aid confrontations, and is consistent with therapeutic aims. Still, manipulation carries a slightly malodorous connotation as a therapeutic method. This connotation derives in large part from the usual definition of the word—a "skillful arrangement" or a "devious, shrewd" operation which accrues to the advantage of the manipulator. In psychiatric practice, the overtones of cupidity still cling to the idea of manipulating patients.

Further, under the influence of psychoanalytic theory, any attempt to arrange or manipulate the patient is frowned on as an unwarranted intrusion into the analytic situation, i.e. the transference. Odious though the comparison may be, the "trouble-maker" in a hospital or prison setting, the psychopath, also objects strenuously to therapeutic manipulation, on different grounds. While on the one hand, the therapeutic staff consider *their* manipulations to be for the patient's "own good," the resistant recidivist, on the other hand, tends to decry and to flout these good intentions as inimical to his interests and threatening to his ego structure. Whereas the average patient, anxious to be helped, accepts manipulation by hospital staff without objection, recidivists resent any technique that aims to undermine their defenses, which they feel to have served them well. This antagonism is common among those sophisticated drug-using, directionless individuals who have knowledge of therapy in various forms—encounter, group therapy, etc.—and insist on their "right" to resist interference with their lives. As captive patients, they raise the philosophic question of the "moral right" to their own road to the "pursuit of happiness" which our Constitution guarantees.

Abstractly attractive as this thesis may be, we, as social therapists in the court room, prison or clinic, are bound to society's traditional aims of *adjustment*, if not cure. The Criminal Diagnostic plan proposed, is we feel, a frontal attack on a problem that defies excoriation and punishment, resists pleading alternating with exasperation, and frustrates society's good will and sympathy.