

WAR'S AFTERMATH

AND

THE CRIMINAL COURTS

AN ADDRESS

BY

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War's aftermath has always left its imprint upon society.

Will the same be true of the criminal courts?

Since long before hostilities ceased in World War II -- since those days when V-E Day and V-J Day were merely symbols of what we looked forward to in the distant future -- there have been dire predictions that we would see a postwar crime wave of a magnitude never before experienced.

Past history supported these predictions.

After the Revolutionary War there seems to have been an epidemic of horse stealing.

At the close of the Civil War there was a great increase in crime, not only in the South where conditions were abnormal, but also in the North.

A crime wave of major proportions followed World War I, both in the United States and in England.

Numerous factors work towards these postwar crime waves.

All the elements that make for an increase in crime seemed to be present on the immediate horizon during World War II.

In the background lies the fear that the displacements, the pent-up bitterness, the racial tensions, and the impairment to human values that accompany war may lead to a crime wave.

There were those, too, who argued that our soldiers, proud of their worth as the defenders of the homeland, bitter towards shirkers and those who enriched themselves during wartime, and inured to the hardships of war, would make short work of the rights and property of others.

To this may be added the widely publicized statistics released from time to time by law enforcement agencies showing an ever-increasing number of arrests.

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A steady increase was noted from the beginning of the war until the recent figures compiled by the Federal Bureau of Investigation for the first half of 1946 finally showed a decline.

When the effect of the postwar crime wave, if there is one, will reach its peak in the criminal courts is debatable.

I can say that at present there is nothing disturbing about the number of commitments to federal correctional institutions; those figures discount the existence of a postwar crime wave.

But let's think now of war's immediate aftermath on the criminal courts.

First of all, I say to you that there is no upsurge in crime due to the returning veteran -- that idea can be dismissed as "pure bunk," as officials of the Department of Justice put it not long ago.

Some twelve million of them have returned to civilian life and they are doing an outstanding job.

They are flocking back to work and doing it well; they are entering into the affairs of their community; they are running for Congress and all the elective offices of their state and local governments; and a huge number are continuing their education.

Over one million two hundred thousand veterans are back in schools and colleges this fall with perhaps another quarter of a million turned away because existing facilities simply can't be stretched far enough -- convincing proof indeed of the seriousness of the veterans' efforts to get back in the swing of civilian life.

On our part, the Congress and the federal government have labored to help the veteran over the hump of transition from soldier to civilian.

I think I can safely say that we have succeeded far beyond the results achieved after any previous war.

The GI Bill of Rights with its provisions for education and training and for government-backed loans for business or homes, increased pension and hospitalization benefits, and liberalized insurance provisions, gives much more to the veteran of World War II than any previous administration gave to the veteran of our other conflicts.

In the Department of Justice we are most intimately concerned with his reemployment problems, since the Selective Service Act, which establishes his reemployment rights, makes us his lawyer if he is refused his old job and finds it necessary to go to court to get it back.

He doesn't go to the criminal courts, of course, but if we ignore his problems the time is not far off when the criminal courts will bear the brunt of our neglect.

Some time ago when it became apparent that demobilization was going to create a lot of employment problems and a good bit of litigation, we created a unit in the Department of Justice called the Veterans' Affairs Section.

This is the first time in the Department's history that we have had such a section, with all our responsibility for the enforcement of veterans' rights centered in that one place.

We have tried to help all veterans with reemployment problems, to inform them of their legal rights, and where necessary to represent them just as you in private practice would represent one of your clients.

The first annual report of this Section shows over 4500 applications for assistance, more than 1500 cases amicably settled, and 218 cases

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taken to the Federal courts.

We carried one of them, involving the much discussed "super-seniority" question, through the Supreme Court of the United States at the veteran's request.

But I am digressing.

When we look at those committing postwar crimes, we see on the bright side that they are not the veterans, but on the dark side that they are his younger brothers and sisters.

We are not alarmed by the increase in the number of crimes, but we are alarmed when we learn who are committing them.

We see that there are more 17-year-olds arrested than any other group; that 11% more boys and girls under 18 were arrested during the first half of 1946, than during the first half of 1941, the last peacetime year; and that arrests of girls under 18 have increased 193% since 1939.

This increase of juvenile delinquency should be of great concern to parents, school authorities, the church and community agencies, and to the Federal government as well.

We know that behind almost every adult offender is the shadowy outline of a juvenile delinquent.

To be sure, juvenile delinquency stems from many causes and there is no simple, single remedy.

It is a by-product of the broken home, disruption of home life consequent upon the war and lack of parental control, as well as an increase in the number of rejected, illegitimate and handicapped children.

Homes are being broken by desertion and divorce at a rate never before equalled in this country.

While the marriage rate per thousand of population is up about 25% since Pearl Harbor, the divorce rate has increased nearly 50%; about one out of every four marriages now ends in the divorce court.

The perplexing problem of juvenile delinquency cannot be shunted aside by vague generalities and general preachments which merely lull us into inaction or a sense of despair.

What is needed is a realistic program in each and every community; cooperation between Federal, state, community and private organizations on a continuous basis.

So that is what we're working on right now.

The Department of Justice, in collaboration with hundreds of public and private agencies, will hold, on November 20, 21 and 22, a National Conference for the Prevention and Control of Juvenile Delinquency.

This Conference will be short on speeches, frills and window dressing, and long on down-to-earth work.

Its report will be published and distributed on the widest possible basis.

I don't say that this report will solve the problem of juvenile delinquency; on the contrary, I know that it will not.

No one conference can do that.

The ultimate solution rests with the people.

But our Conference will start the ball rolling and point the way.

The real pick and shovel work can then begin.

With the understanding and help of the courts we can all work together towards making useful citizens of teen-agers, many of whom are victims of a world torn apart by a conflict not of their own making.

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Their mistakes are the aftermath of the mistakes of preceding generations.

It is our solemn duty to soften that aftermath and give these boys and girls their chance to become the useful citizens of tomorrow.

So much for the juvenile.

What of the adult offender who reaches the criminal courts?

As I said before, there is no veterans' crime wave, but there is a law of averages.

It means that some of the cases on the postwar dockets of the criminal courts will necessarily involve veterans.

Of course, you can't induct a whole segment of the population without getting some who are criminally inclined.

With upwards of 30% of the total male population veterans of one or the other World War, we must not hide our heads in the sand and pretend they are all law-abiding.

Some would have broken the law anyway.

But what, if any, situations can the courts be asked to meet specifically for the ex-serviceman?

The plain answer is none.

Basically, every criminal case stands squarely on its own feet -- each depends directly upon its own facts and circumstances.

True, the veteran has suffered hardships and risked his life for his country, but he does not ask, I am sure, that society grant him special privileges.

We have noticed two diametrically opposite stands towards veterans taken by a few criminal courts.

On the one hand is the position "Let's crack down on these men and give them the limit; they must be made to realize that they can't expect special privileges."

On the other hand is the position that excessive leniency must be shown.

Neither is correct.

All defendants stand before the courts on the same footing and every prosecution must be treated on its own merits, whether or not the defendant is a veteran.

That is what the veterans ask and want -- equal consideration with the rest of us, no more and no less -- that is the due of every defendant.

The way for the criminal courts to insure equal treatment in the postwar world is to handle all cases alike; have all the facts, the complete background; and then impose sentence upon the convicted defendant strictly on the basis of merits and circumstances.

Fortunately, so far as the Federal courts are concerned, the wheels of justice are greased as never before.

We have new tools for streamlining and speeding up criminal cases and for protecting the rights of both the defendant and the government.

These are the Federal Rules of Criminal Procedure which took effect last March.

I cannot too highly commend the American Bar Association for the part it played in securing the promulgation of these Rules; its tireless efforts and unceasing support went far in helping them along the lengthy road to their adoption.

When the jury pronounces the verdict asked by the prosecutor and dreaded by the defendant, "guilty as charged," the judge has vitally

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important machinery placed at his disposal by the provisions of Rule 32.

This Rule directs that the probation service shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs.

It further says that the presentence report shall contain any prior criminal record and such information about the defendant's characteristics, financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence, in granting probation, or in the correctional treatment of the defendant, as well as such other information as may be required by the court.

This is a valuable tool indeed.

Through it and through investigation made by an efficient probation service the court on sentence day is armed with knowledge of the defendant's background and history; of all the factors which may mitigate or aggravate; and the defendant's prospects, or lack of them, for rehabilitation.

If the defendant is a veteran the pertinent facts of his war service are accessible to the probation service, and through it to the judge, the same as the facts of other phases of the defendant's life.

If he is not a veteran there may be just as many or more significant phases of his background which should weigh heavily in determining the nature and amount of punishment warranted by the crime.

The testimony at the trial, rigidly restricted to the perpetration of the offense itself by the rules of evidence, will justify the finding of guilt.

But it seldom points inevitably to the kind of penalty to be exacted.

Something more is needed.

Obviously the same sentence will not do for everyone who steals a car or for everyone who forges a check.

If that were so we would need no probation law and no leeway for minimum or maximum sentences.

Our laws could merely say so many years for such and such a crime; imprisonment in Alcatraz for one and in a reformatory for another.

But that is not the test.

Defendants are not a class or an inanimate segment of society.

They are individuals as you and I.

In every case there lies behind the evidence which caused the jury to place the defendant in the grim shadow of prison walls a mass of facts and circumstances, utterly inadmissible at the trial but vital in determining how best to require atonement for the wrong against society.

The new Rules require that it be explored to the limit in each case.

The only distinction that lies between the veteran and the non-veteran is that dictated by the facts -- equal justice to all.

Another specter appears on the horizon as an aftermath of war.

To stamp it out requires the work of all arms of government, Federal, state and local.

It closely affects the criminal courts -- the epidemic of spurious schemes and swindles, designed to mulct the veteran or his family which has swept the nation.

You have heard and read of them, but I'll mention one or two.

One of the worst is the "phony hero book" racket, where the family of a deceased serviceman pays \$15 or so on the representation that their

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boy has been found eligible for inclusion in the book because of his outstanding war record.

Of course, it is never published.

Unfortunately this type of swindle is profitable.

The racketeers know that the families of servicemen are easy victims.

Then we have the second-hand clothing racket which boomed into a two million dollar a year business in New York City alone as a result of the acute clothing shortage.

Seizing upon this scarcity slick operators advertised and sold ready-to-wear garments which turned out to be rags.

The field of education was invaded by racketeers; one so-called school offered to teach bricklaying by mail.

Then there are the familiar fraudulent medical preparations, elixirs to rejuvenate and restore lost youth and the like, to which has been added the more modern innovation of medicines guaranteed to cure veterans of mental troubles or war neuroses.

To stamp these out is the obligation of all government.

From the Federal standpoint mail fraud investigations have been increased a hundred fold since V-E Day.

From the standpoint of the state there is much to be done since we cannot prosecute the small gyp artist who is able to operate without using the mails.

Vitally important is the function of the courts.

They can make these rackets unprofitable by imposing adequate sentences in cases of conviction.

This is one of the aftermaths of war on which we must all declare war.

On the other hand, however, we see that the veterans as a class are not wholly without their own racketeering element.

This is attested by those members of the so-called "52-20" club who claim and receive unemployment compensation after they find employment and go to work, and by the false claims for on-the-job training and duplicate allowance and allotment checks which have been filed.

To protect all veterans it is our duty to prosecute vigorously those unscrupulous individuals, even though veterans, who take advantage of the GI bill and other legislation to cheat the government, and we intend to do so.

We need a few things in the field of criminal jurisprudence as the country gets back to normal.

As I said, criminal procedure in the Federal courts is now geared to the modern postwar world, but there are other phases of the everyday work of the criminal courts where their burden could be immeasurably lightened and the administration of justice improved by taking a few long-needed steps forward.

Most of all we need legislation like the proposed Federal Corrections Act which has been pending in Congress for several years, but which has not yet been enacted.

This legislation would give incalculable aid to the criminal courts in respect to two of their most trying and yet most important tasks -- imposing sentences and handling the youthful, but not actually juvenile, offender.

There are three purposes of punishment for crime.

The first is retributive justice, the second is protection of the public, and the third is the reformation of the offender.

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To temper these and blend them in exactly the right proportions in every case is a superhuman job for the judge handling huge criminal dockets.

For that reason the indeterminate sentence has been advocated, but it is not strictly the right answer.

The Federal judiciary has strongly felt, and rightly so, that the amount of punishment should in the final analysis be with the trial judge.

Yet we are all aware of the evil of the wide disparity in sentences imposed in different parts of the country for the same offense -- a year's imprisonment one place and five years' imprisonment somewhere else for the same violation of the same law.

The proposed Federal Corrections Act would provide that the court, if it decided to sentence to more than a year's imprisonment, would impose an original sentence for the maximum period provided by law.

However, a division of a Federal Board of Corrections which the bill would create would study the case, interview the offender, and recommend a definite sentence to the court within six months.

The court could accept or reject the sentence recommended, but, if it failed to act upon the recommendation within two months, the recommendation would become the definite sentence.

The parole power would, in addition, be transferred from the Board of Parole to the new Board of Corrections.

Next, the Federal Corrections Act would create a Youth Authority Division in the proposed Board of Corrections.

Youths under twenty-four could be committed to the Authority and sent to a classification center.

After study of each case, the division would either permit the youth to remain at liberty under supervision or would direct his transfer

to an institution or agency for treatment.

It could release him conditionally at any time and might discharge him unconditionally one year after conditional release.

Now is the time to start plans for the more effective treatment of the older teen-age and young adult offender.

The Act would pick up where juvenile courts and the Federal Juvenile Delinquency Act leave off.

It would lift from the shoulders of the judge an intense and heavy burden,

In summary, we see that none of the problems confronting the criminal courts as an aftermath of war are insurmountable.

We all know that this government has always insured, and always will insure a free and independent judiciary treating everyone fairly and impartially, be he rich or poor.

That is the birthright of everyone, but unfortunately it has not been enjoyed by many who do not live under a democratic form of government.

When the judiciary's independence is shaken the freedom of all is jeopardized.

The reign of terror and the concentration camp are just around the corner.

I cannot help but compare our judicial system with the Nazi Party's maliciously-executed policy of enslaving the German courts and rendering them subservient to Hitler and his henchmen.

It is a sorry picture indeed and contributed, of course, to the political death of the government that conceived it.

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Starting in 1933, when the Nazi Party forced legislation through the Reichstag permitting so-called "laws" to be made by the cabinet, and by decree suspended the constitutional provisions protecting civil rights, Hitler rapidly reduced the courts to a position where they were little more than an arm of the Nazi Party like the Gestapo.

By the middle of the war Hitler had, by his own decree, placed himself supreme above the laws of the land, empowered to take untrammelled action regardless of existing law and vested rights.

He then empowered the Reichsminister of Justice to take all measures ordered by the Fuehrer -- as the translation reads, the Minister "can hereby deviate from any existing law."

If anything then remained of the German judiciary as a symbol of Justice this, of course, sounded its death knell.

The Reichsminister immediately informed all judges and prosecutors that henceforth he would issue periodic statements reviewing their decisions and pointing out how a better one could and should have been made.

I have read a few of his reviews.

Nothing could be more abhorrent to all our concepts or more clearly show the sad plight of a people when those in power destroy the independence of the courts.

The one that I cannot forget is his review of a decision imposing a mild sentence upon a non-Aryan youth because of unusually mitigating circumstances, reviewed at length in the opinion.

The directive condemns this as utterly erroneous; all judges are told that the court should have held that the defendant was an enemy of the state and hence there could be nothing to mitigate his offense.

The Nazis also revised the criminal law so that the state could apply for a new trial within one year after an acquittal in any case where the prosecutor entertained doubt as to the correctness of the judgment.

But as a weapon of oppression this law was nothing compared to the prosecution by analogy statute which the Reich Cabinet promulgated in 1935.

To us this law is almost unbelievable; it is revolting to our concepts handed down by our forefathers who founded this nation.

This statute permitted the state to punish any act injurious to its political interests even if no existing criminal statute made the act an offense.

Prosecution was brought under whatever statute most nearly fitted the case, in other words, whatever statute seemed analogous.

Thus any act which the Nazi Party desired to punish was made criminal; the prosecutor merely picked a criminal law, declared that it most nearly fitted the case, and another victim went to the concentration camps.

We may be thankful that the aftermath of war finds no such situation forced upon our criminal courts and our citizens.

On the contrary, with our great heritage of fair administration of justice to all and the new Criminal Rules and other machinery designed to simplify procedure and do away with unjustifiable expense and delay, we need have no fear of the ruthless devices concocted by totalitarian powers.

Our courts will bring home to us in the postwar world, as they always have done in the past, the significance of the legend over the door of the highest federal tribunal: "Equal justice under the law."