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BOOK REVIEWS

Work, Earn and Save, By Allen H. Gwyn. Chapel Hill: Institutes for Civic Education, Extension Division, University of North Carolina. 1963. Pp. 189. \$2.50.

In the latter 1940's Judge Allen Gwyn, of the Superior Court of North Carolina, suspended sentence on a person convicted of a criminal offense, on this condition:

That the defendant apply himself consistently to a legitimate, gainful occupation; that he save his earnings above his reasonably necessary expenses; that he appear at the last term of this court before the expiration of the period of suspension and show that he has lived up to the terms of this suspension; that he deposit with the clerk from his earnings a cash bond in the sum of \$—— for his appearance, which bond shall be paid in weekly installments of \$—— per week; that following the payment of the cash appearance bond, the defendant shall continue to work and earn and from his earnings pay into the office of the clerk as a savings account the sum of \$—— per week during the remainder of the period of suspension. Neither the bond nor any additional savings shall constitute a fine or penalty. The bond shall be refunded to the defendant upon his appearance, as required. Likewise any additional savings shall be refunded to him.¹

There was nothing unusual in the suspended sentence. It was a step in the evolution of the law of punishment for crime in North Carolina—from the fixed punishment, to fixed limits of punishment—to escape from these limits by way of suspended sentences. Judges had been giving suspended sentences for a long time and on many conditions; good behavior, no violation of the law in any respect, refraining from selling liquor; refraining from libel and slander, refraining from use of intoxicating liquor, restitution of property, leaving the county, and not talking about “young girls in any way except complimentary remarks,” and for violation of the “peeping Tom” law on condition that the accused “shall not go down town at night for six months except in the company of his wife.”²

To enforce these conditions and to supervise the conduct of

¹ GWYN, *WORK, EARN AND SAVE* 30 (1963) [hereinafter cited as GWYN].

² Coates, *Punishment for Crime in North Carolina*, 17 N.C.L. REV. 205, 216 (1939).

juveniles and adults on probation, the legislature provided for a new link in state penal policy consisting of probation officers; for, though these officers work under the supervision of the court, the administration of probation is their responsibility and they have developed professional techniques and standards of their own in the performance of specific duties set forth in the statute.³

But, if there was nothing unusual in the theory or the practice of the suspended sentence, there was something unusual in this particular condition prescribed by Judge Gwyn in the latter 1940's—it was the first of its kind. And it was the beginning of a process he has carried with him into every term of criminal court he has conducted from that day to this. He pronounced this first condition in open court in fear and trembling. For a long time he carried it around in his pocket—for fear of getting “out of line” with sheriffs and police, prosecuting attorneys, and his fellow judges—not forgetting the voters who would weigh him in the balance on election day and maybe find him wanting. But pronounce it he did, and get out of line he did.

The keystone of Judge Gwyn's arch is found in three words: *work, earn, save*. Whenever circumstances permit, he will put the convicted person on probation instead of putting him in prison. He will tell him to get a job, go to work and earn his keep, instead of telling him to quit work, go to jail, and let the county keep him. He will tell him to turn over his savings every week to the clerk of court who will keep them for him, instead of telling him to dig up money for a fine which the county will keep for itself. The man on probation is on his own and not on the county. He is building himself up by working in freedom, instead of tearing himself down by loafing in confinement. He is keeping himself fit with incentive, instead of corroding without it. He knows the savings from his earnings will come back to him with interest when probation ends and start him off ahead of the game instead of behind it. If a convicted person refused to work, says Judge Gwyn, then send him back to prison.

Willingness or unwillingness to work is the best test I know to divide the sheep from the goats. This applies not only to repeaters but also to first offenders. Not only is the test an accurate one in a majority of the cases, it is also a speedy test.

³ N.C. GEN. STAT. §§ 110-21 to -44 (1953) (juveniles); N.C. GEN. STAT. §§ 15-193 to -209 (1953) (suspended sentence and probation).

It doesn't take long to find out who will work and who will not work.⁴

Judge Gwyn was careful to point at the start that his work, earn and save plan would be no soft, sissy plan to avoid the rigors of prison life.

It is a "get tough" plan. It is tough on the judge, tough on the probation officers, and tough on the probationers. He who thinks this program of probation is a soft proposition coming from a soft judge, has never tried it. It is one of the most difficult and most exacting of all responsibilities falling within the administration of the criminal law. It calls for all the energy, all the integrity, all the compassion and all the perseverance we can muster.⁵

Judge Gwyn has extended his plan of probation on the work, earn and save condition with his *weekend imprisonment plan*.

In this connection, let me explain the treatment of a class of defendants who need to see the inside of a jail but who can be saved without the stigma of a prison sentence.⁶

. . . .

Non-support defendants result more often than not from the use of alcohol. The defendants draw their pay, spend their money for liquor, and get drunk. They do not usually drink on the job during the week, but get drunk on weekends. Instead of sending them to prison for solid time, I give them suspended sentences and require as a condition of suspension that they remain in jail from the end of the work week until Monday morning. Also, they are required to deliver their pay checks to some responsible agency, usually the welfare department, to be applied to the use and benefit of the entire family, including the defendant himself. It works out well. I do not trouble the probation officers with these cases as a rule. The sheriffs act as my aides. I authorize them to relieve the defendants from the weekend stay in jail when they appear to be reasonably dependable. If they lapse into their old ways, back to jail they go.

. . . .

Our chain gangs and prisons are well stocked with defendants who are guilty of non-support of their families. We imprison them for periods of six, twelve, eighteen months, and two years. We spend nearly 1,400 dollars per year for their keep. We support and maintain their families through public taxation. We

⁴ GWYN 77.

⁵ *Id.* at 39.

⁶ *Id.* at 68.

lose from every angle. These offenders are not usually malicious or dangerous to personal safety and security of the people. There would seem to be a better way to handle such customers than the usual method of imprisonment.⁷

Judge Gwyn has used his discretion to introduce still another type of judgment based on appeal to a man's desire to hold to what he's got. As a lawyer he defended a man charged with bootlegging liquor. As a solicitor he prosecuted him. Later as a judge he was called upon to sentence him. He turned to the man in open court and said "I wish you would tell me what it will take to stop you from bootlegging liquor. A fine won't stop you. You have been fined. A prison sentence won't stop you. You have been in prison. What will stop you?" No answer. A little questioning brought out the fact that he had accumulated property valued at approximately 15,000 dollars which included his little home and a store stocked with goods. He turned to the court reporter and dictated a judgment substantially as follows:

Let the defendant be confined in the common jail of Caswell County for the term of two years to be assigned to work under supervision of the Prison Department, and to pay a fine of \$10,000 together with the costs. The prison sentence and also the payment of the \$10,000 fine are suspended for a period of five years upon the following terms and conditions: that the defendant be of good behavior and violate none of the laws of the State, that he apply himself consistently to legitimate gainful occupation, that he do not have or possess any quantity of intoxicating liquor either for the purpose of sale or otherwise, that he execute a bond to the State of North Carolina in the sum of \$10,000 for his compliance with the terms of this suspension; that he execute a deed of trust together with his wife to the High Sheriff of Caswell County as trustee covering his home, his store, all his real estate, to the end that, if he violates the terms of this suspension the High Sheriff as trustee pursuant to order of court may foreclose the deed of trust, and, from the proceeds arising from sale made, pay the fine together with the costs and any surplus or remainder to be refunded to the defendant.⁸

After Judge Gwyn dictated the judgment and told the man to think it over and discuss it with his wife, his counsel arose and said that he could not recommend that his client accept such a judgment;

⁷ *Id.* at 78.

⁸ *Id.* at 95-96.

that he had never heard of a judgment like that in his life. Judge Gwyn answered he had never heard of such a judgment in any court, but that he was ready to offer it and his client could accept it or not as he preferred.

On the following day the man returned to court and told Judge Gwyn he had talked the matter over with his wife and that his wife could not agree to join with him in executing the bond and deed of trust. Judge Gwyn said he didn't blame his wife at all, that if she had no more confidence in her husband than that there was no reason why he should have more confidence in him than his wife, and that he would strike out the conditions of suspension. At this point the man requested the privilege of returning home and talking with his wife again and this privilege was allowed. The wife came in with her husband the following day and announced that he would accept the judgment. His attorney opposed the judgment to the point that he would not prepare the deed of trust for his client. Judge Gwyn called on another local practicing lawyer to prepare the bond and the deed of trust according to the terms of the judgment.

Following this experience Judge Gwyn used the suspended sentence, coupled with the suspended fine secured by deed of trust, as an effective measure against making and bootlegging liquor. He cannot recall a single instance where the court was called upon to foreclose a mortgage and sell a defendant's home. In those instances where the defendant has not accumulated property sufficient to secure the fine, he achieves the same purpose by requiring the defendant to deposit a cash bond in installments from his earnings, believing that the possible loss of one's money or property is a strong influence to keep his feet in the right path.

If the proof of the pudding is in the eating, perhaps the proof of Judge Gwyn's *judgments on the work, earn and save condition* may be found in their stimulus and response. He gives this illustration:

John Doe was a thief. He spent fifteen months in a state reformatory for stealing. At the March 1954 Term of Superior Court of Forsyth County he was convicted of breaking, entering and larceny. He had been engaged in a series of breakings, enterings and stealings, about six or seven. He was in his late teens—a typical candidate for the state's prison or at least a long term on the roads. He had given the sheriff of the county and the policemen a fit. When they finally caught him they were

dead certain that the court would protect the public by placing him behind bars for a long time. When I failed to sentence him to prison right off the bat and sent him back to jail while I mulled over the case, the officers got the notion that I might let the boy off. Two or three officers, including the sheriff, sidled up to me and expressed the hope that I would give him a long term because he had given them so much trouble. I had talked with the boy. Something about him impressed me. He was frank, nice looking, intelligent, and appeared to have courage. The officers then got in behind the solicitor and encouraged him to put the pressure on me.

Finally I told the solicitor that I preferred not to send the boy to prison until I had talked with someone who had tried to help and had failed. I requested that he send an officer to the boy's neighborhood and find somebody who knew him well and who had tried to help him. Several days later three or four witnesses were brought in. All gave the boy a bad reputation. I inquired of each if he had done anything to help the boy. None had ever made any effort toward helping the boy, had not even offered a helping word. I said to the solicitor in open court that I would not sentence the boy to prison until somebody had tried to help him. That was when the solicitor, the officers and all fell out with me. He didn't go to prison. He went to work under strict supervision. Today he is a certified public accountant of the State of North Carolina.⁹

Judge Gwyn's book is full of similar illustrations showing how his *work, earn and save plan has saved men for their counties, their families and themselves*. No one can read the records in this book without coming to the conclusion that the *work, earn and save plan has saved the money of men for their counties, their families and themselves*. Judge Gwyn points to the fact that the total savings of probationers under this plan in the several counties where he has held court amounted to 46,253.99 dollars by November, 1959. He uses his home county of Rockingham as an illustration of its possibilities in North Carolina if it were used by forty-four superior court judges and the recorders court judges working in the one hundred counties of the state, here is the way he puts it:

The total savings by probationers to date in Rockingham County amount to \$12,555.35. Since I preside in my home district only six months of every four years, I hold court in Rockingham only one-eighth of the time, and presumably, only one-eighth of the probation judgments carry the work, earn and save features.

⁹ *Id.* at 43-44.

There are two recorder courts in the county which are in session continuously. They probably pass upon more probation prospects than the superior court. If, therefore, the other seven-eighths of the probationers from the superior court had been required to work, earn and save the total savings in this county alone would be in excess of \$100,000 (savings, mind you—not earnings—and the savings usually average around fifteen percent of the earnings). If the other ninety-nine counties in the state approached the record in Rockingham, the total would have to be up in the millions (savings largely by persons who were formerly thieves and parasites). This estimate does not take into account any savings on the part of probationers from any of the recorder courts of our one hundred counties.¹⁰

Judge Gwyn looked the prison sentence in the face and found it wanting. He learned from George W. Randall, Director of Prisons for North Carolina, that during the year 1960, 7,834 first offenders were imprisoned in this state. Of that number 4,588 were sentenced for terms of one year or less. The average term for these 4,588 was 5.73 months. He concluded that when this state sends 4,588 offenders to prison for terms of twelve months or less, they have not always considered sufficiently the results and the alternatives. He is certain they have made a high percentage of mistakes. He feels that many repeaters have appeared in his court who, as first offenders, were sent to prison as first offenders when they could have been rehabilitated without a prison sentence. He illustrates his point:

I have in mind an example of a boy sixteen years of age who had no previous record and showed no previous criminal tendencies. This boy took a screwdriver, opened up two or three parking meters, and stole three dollars. On the two counts of larceny and malicious injury to property, he was sentenced to twelve to fourteen months on the roads. He got homesick, escaped, and went back home. He was recaptured, tried again, and received a further sentence. He got homesick the second time, escaped and went back home. He was recaptured at his home, returned to prison, retried and received a second sentence for escape. The third time he escaped, he did not return home. He stole an automobile and took flight in the opposite direction. He was captured, retried, and resentenced. When he came into my court as a felon, he had more time to serve than he had when he first entered prison. He was an underprivileged boy who had no mother and lived with an illiterate father who was barely able to make a living. Apparently nobody had ever tried to improve

¹⁰ *Id.* at 41.

his environment or his chances. The state took charge of him and through the prison sentence completed the ruin. He faced me as a hardened, hostile, vindictive person. It is difficult to conceive how the judiciary could have made a greater mistake.¹¹

Judge Gwynn looked the fine in the face and found it wanting. Here is his reasoning:

Fines and imprisonment have been our stock in trade. We fasten a fine to a man who hasn't a dime. If he pays he has to borrow the money. If he borrows it, he does so from friends or relatives who are also low in the financial scale. Whoever heard of a bank lending a thief money to pay a fine for stealing? . . . In order to pay his fine the criminal usually contracts a debt which he never pays. As a consequence, those closer to him suffer deeper distress.

. . . .

We do not stop at fines. We permit legal extortion in addition to the fines. How do we accomplish this? We have done it so often, I do not have to tell it. A man wobbles along a sidewalk with a few spoonfuls of a fifth left of non-tax paid liquor in his hip pocket. He is arrested, carried to the police station, and the following separate warrants are issued against him: the first, for being drunk and disorderly; the second, for unlawful transportation of intoxicating liquor; the third, for unlawful possession of intoxicating liquor (having liquor in an unsealed container off his premises); the fourth, for unlawful possession of non-tax paid liquor. In order to increase the cost, four separate warrants are issued instead of one. All of the charges being of equal degree could have been embraced as separate counts in the same warrant. Four separate cases are docketed for which four separate docketing fees are taxed with the cost. When the record is completed, it shows four arrests, four warrants, four sets of witnesses, four trials, four judgments and four separate bills of cost, all for one and the same transaction. That is a damnable practice. We judges do it. The records prove it. Should we not be ashamed? The fact that the recorder allows it or that the officer is a courteous man and expects his fees is no excuse. Extortion under legal sanction should be abolished.¹²

Judge Gwyn looked his fellow citizen in the face and found him wanting to help. While he was holding court in one county in the western part of North Carolina, he put a number of defendants on probation under the supervision of the probation officer. Employ-

¹¹ *Id.* at 22.

¹² *Id.* at 89-91.

ment in that area was particularly difficult to obtain at that time. He went with the probation officer to an evening appointment with the president of a big lumber company who told them he had a waiting list of prospective employees needing work and that he would be unable to employ their probationers. They explained to him that these probationers had to go to work or go to jail, that if they went to jail they would have to be kept and supported by the taxpayers, that they would finally be returned to society in worse shape than when they left and that they would probably be no good as long as they lived. The lumber company president changed his mind and told them that he would create employment for eight or ten of them; that he might not be able to pay them the same wages paid to laborers otherwise employed but that he would furnish work and pay reasonable wages for the work performed. He said that if a Judge of the superior court took enough interest in those boys to go out and look for work for them they could expect his company to do its part.

Judge Gwyn is the first to admit he does not succeed in every case. Here is the story of his most magnificent failure—occurring since his book was printed. At a recent term of the superior court “John Doe” pleaded guilty to a series of offenses, including forgery of checks, larceny of an automobile, and hit and run driving. He had spent 14 months in Jackson Training School. He had been sent to prison on his sixteenth birthday and had stayed there until he was nearly twenty years old. Judge Gwyn was unable to find anybody who had undertaken to help the boy to straighten up. Further imprisonment at this time appeared to accomplish no good in making the defendant fit to live in a free society, and he concluded that the best interest of the defendant and the public welfare would be served by placing him under strict supervision and requiring him to go to work and provide for himself and his dependents. He gave him a sentence of two years, suspended it for five years, and placed him on probation.

The next issue of the local newspaper came out with this editorial:

A young man named . . . [John Doe] is carrying a heavy load today.

If . . . [John Doe] falters under his burden, an older Rockingham county man named Judge Allen H. Gwyn will have a heavier one.

If . . . [John Doe] does not come through on this opportunity he should live the rest of his life with the knowledge that he let down a man who is probably the kindest, most tolerant judge in North Carolina history.

. . . .

Judge Gwyn's burden, if . . . [John Doe] does not come through as the judge hopes, will be the knowledge that he has turned loose another criminal to prowl the streets and highways of the state.

. . . .

In a manner of speaking, the defendant and the judge are both on trial in this situation—. . . [John Doe] for his ability to make a good citizen of himself; Gwyn for his long-held theories that soft handling of defendants is the most effective way to curb crime. Time will render the verdict in both instances.¹³

Judge Gwyn wrote an answering letter to the editor, saying:

My softest years were those immediately following my five years as solicitor when I ushered more defendants into the prisons. It is so easy. I could wade through a heavy docket in a hurry, get my hat and go home. Law enforcement officers, the press, and the public were satisfied. But when the faces of once first offenders returned, hardened and bitter, requiring longer terms for more serious crimes; when the prison population showed from 70 to 80 percent repeaters; I began to do some serious thinking about our methods. I sought a new approach.

You may call it soft. But let me tell you this: It has been rough. It is the most exacting service I have rendered during my professional career. It is not an easy matter to unravel a defendant's past and discover the problem he has been unable to solve. It is not easy to change his way of thinking, and start him in a new direction with determination to follow through. It is an up-hill business even when everybody is helping all they can. It is so much more difficult when, instead of finding helping hands, we face organized hostility. I tell you, the job is rough, and no man has ever called it soft who has given it a fair trial. It is rough on the defendant, too, rougher than he has ever experienced either in prison or out of prison. The big difference is that a little hope and encouragement enables him to endure the rough.¹⁴

A few weeks later, while holding court in a neighboring county Judge Gwyn got a long distance call from the Probation Officer, reporting that John Doe had violated his probation: (a) by pur-

¹³ Kannapolis (N.C.) Daily Independent, Mar. 25, 1963, p. 2, col. 1.

¹⁴ Letter from Judge Allen H. Gwyn to the editor of the Kannapolis (N.C.) Daily Independent, April 3, 1963.

chasing an automobile under false pretenses, (b) by wilfully remaining away from his wife and home all night, (c) by wilfully failing to report to his job on the morning of April 18th, thereby losing his job, (d) by wilfully keeping his whereabouts unknown, (e) by going to his home and taking his five weeks old baby and leaving for parts unknown, (f) by doing other things, such as staying out and roaming around the county all night with a woman, and (g) running from the officers when they undertook to apprehend him.

Judge Gwyn had John Doe brought into court with the intention of revoking his probation then and there. He was disturbed. On the hearing it turned out the probation officer had accepted, without investigating, the reports on John Doe which he had got by way of hearsay. John Doe denied then with a sincerity and conviction that caused Judge Gwyn to call into court all of the officers and others who had made these damaging reports; put them under oath and examined and cross examined them in John Doe's presence; found them full of suspicions, misinformation, and distortions unfounded in fact to the point that Judge Gwyn felt John Doe had justified his faith. He continued his probation and went to hold court in another district—too far away for him to keep his eye on his probationer. John Doe was weak. He could not stand alone. He slipped. He was caught slipping. Another Judge revoked the probation—for cause. And John Doe went to prison.

Shortly afterward the local editor wrote Judge Gwyn a letter telling him he had read the Judge's book on the Work, Earn and Save Plan, and saying:

You may find it hard to believe, but I share your regret that . . . [John Doe] did not make good on the "long-shot chance" that you gave him. He was just a character in another news story when he first came to our attention but your letter made me realize that North Carolina—and the nation, I presume—is full of . . . [John Does] of varying degrees, and that we can not, in good conscience, throw all of them in jail and forget them.¹⁵

John Doe kept in touch with Judge Gwyn through the letters written by his wife. Here is Judge Gwyn's reply to her latest letter:

Thank you for your letter of January 20th. I am sorry . . . [John] was required to go to prison, but I am glad that he

¹⁵ Letter from the editor of the Kannapolis (N.C.) Daily Independent to Judge Allen H. Gwyn, Sept. 16, 1963.

is making a good record and is hoping to get out on parole. If he continues to work hard and show the right attitude, the prison authorities may be able to help him.

Tell . . . [John] that I received your letter and that I will always be glad to help provided he will help himself. He can never get anywhere without helping himself. He knows that I went to bat for him. I do not know how much he let me down, but I am sure he tried harder to do right than he had been before I knew him. Tell him to keep in mind the things I told him.

If . . . [John] will work and behave himself, he can make you a good husband and the children a good father. A whole lot will depend on you also. So, while . . . [John] is off on the roads it is up to you to keep the home as best you can. Don't run around with all sorts of people. Stay at home and do your job so . . . [John Doe] will be proud of you when he gets out.

I wrote out a long report on . . . [John] before I left the County and filed it with the Clerk of the Court. You might get the Clerk to give you a copy of it and mail it to the Board of Paroles in Raleigh. With that report they could understand . . . [John's] case better.¹⁶

In John Doe, as in so many others through the years, Judge Gwyn has seen and heard the still, sad music of humanity, not harsh nor grating, but with ample power to chasten and subdue. Something of this music has found expression in his judgments. As on the day in court when he refused to send a boy to jail until *one person*, at least, could be found who had tried to help him—he who has held out a helping hand to this boy, let him first cast a stone at him. As he has found in the faces of prisoners at the bar the expression of men, like Robert Frost's tenant farmer, who looked back on a past without pride and on a future without hope, and thought to himself—There, but for the grace of God, go I. As he has learned the lesson of the parable: "One knocked on the door, and a voice asked from within, 'Who is there?' and he answered, 'It is I.' Then the voice said, 'This house will not hold me and Thee,' and the door was not opened. Then went he into the desert and fasted and prayed and returned again, and the voice asked 'Who is there?' 'It is thyself,' and the door was opened." Those who come to scoff sometimes remain to pray.

Judge Gwyn has written this book at night after the day's work was over, on weekends after the week's work was done, and in vaca-

¹⁶ Letter from Judge Allen H. Gwyn to Mrs. John Doe, Feb. 10, 1964.

tion time when he might have rested and relaxed. Frequent repetitions of his central theme and underlying philosophy come naturally out of the different facets of his program as he develops it; they are never dragged in by the ears. It is a haunting story without the benefit of a single ghost-written line.

My wife and I heard him tell most, if not all, of what is written here before he put it down on paper. He wrote part of it in his own hand, dictated part of it, and recorded part on the soundsciber, as he found spare moments in the busy life of a superior court judge. Working with him in these fragmentary intervals of time has been a spiritual experience for us both.

His life and work, no less than his book, invite the attention of us all to the problem of crime and punishment which lies like some mysterious torment against the conscience of the state. His magnificent successes, magnificent failures, and equally magnificent persistence in the face of discouraging odds bring to us the meaning of the Greek dramatist writing twenty-five hundred years ago of:

Knowledge won through suffering.
And to us, though against our very will,
Even in our own despite, comes wisdom
By the awful grace of God.

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