From the Expert: The Power of Fixing People Rather than Filling Prisons

By Mary Branham
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By Sue Bell Cobb, Alabama Supreme Court Chief Justice

How many times as a trial judge did I say to victims of crime, troubled youth or dysfunctional families, “I wish I could snap my fingers and make things better. I wish I could snap my fingers and undo all the harm that has caused you to be in court today. Unfortunately, I do not have that kind of power.”

No human being has that kind of power. Judges can use their power in sentencing juvenile and adult offenders in a way that significantly reduces the likelihood that offenders will again cause harm. That ultimately makes life better for the offender, for his or her potential victims, and for the community, according to a 2008 report, “The Most Promising Way Forward: Incorporating Evidence-Based Practice Into State Sentencing and Corrections Policies.” This power—the power “to fix people rather than fill prisons”—is growing in Alabama’s criminal justice system.

As chief justice of a unified court system, I feel privileged to be given the opportunity to enhance that “positive coercive power”—as J. David Bleich wrote in “Contemporary Halakhic Problems “ in 1977—possessed by every trial judge in our state. Because of the wisdom and political courage of former Chief Justice Howell Heflin, in 1973 Alabama became one of the first states to unify its judicial system. The result was the placement of the administrative oversight of the trial courts with the chief justice and the abolition of non-lawyer judges. Adequate and reasonable funding of the court system became the responsibility of the state. Consolidation such as this empowers state court leaders to promote policy changes that are in the best interest of the people. Thus, the courts can fulfill their ultimate mission to fairly, impartially and swiftly resolve disputes, and to adjudicate criminal matters in order to make the public safer.

The constitutional power or authority invested in every trial judge to detain or incarcerate offenders is momentous. As a judge, I did not have the ability to instantly improve people’s lives or situations, but I did possess the power to lock them up. Taking away a person’s freedom is an enormous responsibility and should never be taken lightly. We now know there has been an overreliance on incarceration of nonviolent offenders. Unfortunately, research has demonstrated that it has not necessarily made us safer.

The Public Safety Performance Project of the Pew Center on the States has reported that we in the United States lock up more of our citizens than any other country in the world. In the past, Alabama has certainly not been the exception to this trend. Alabama has the most overcrowded prison system...
in the United States, at 190 percent of institutional capacity according to an Alabama Unified Court System study, and, unfortunately, the least funded, according to Pew. Alabama ranks sixth in the country in the number of adults in prison or jail, with one in 75 behind bars, compared to one in 100 nationally, as noted by the Alabama Unified Judicial System. Alabama’s per diem per inmate could be doubled and not even meet the national average said Richard Allen, former commissioner of the Alabama Department of Corrections. Alabamians are more at risk because of our failure to keep corrections funding at the same pace as our prison population. This has resulted in Alabama having one of the largest ratios of inmates to correctional officers in the country.

Despite our failure to adequately fund corrections, corrections costs consume an ever-larger portion of our state budget. Over the past 20 years, the annual cost of corrections in Alabama has more than quadrupled—growing from $105 million in 1988 to $577 million in 2008. Yet for all this spending, taxpayers are not seeing a solid return in terms of public safety. In fact, recidivism rates are on the rise, according to the Alabama Unified Judicial System.

Let me be absolutely clear: We must lock up violent and serious offenders so they cannot continue to harm innocent people. However, where nonviolent offenders are concerned, an alternative to the costly cycle of crime, incarceration and recidivism exists. As observed by Roger Warren, president emeritus of the National Center for State Courts: “Today, ... there is a voluminous body of solid research showing that certain ‘evidence-based’ sentencing and corrections practices do work and can reduce crime rates as effectively as prisons at much lower cost.”

As the administrative leader of the court system, I stated in my 2010 State of the Judiciary address that, “... We pledge ourselves to the change necessary to stop the revolving door. I see a day when someone breaks the law, that he or she will go before a judge committed to fixing people rather than filling prisons, a judge empowered by the legislature to do just that.”

In an effort to make that pledge a reality, court leaders and the Alabama Legislature have taken many steps. Of enormous significance was the creation of the Alabama Sentencing Commission in 2000. The sentencing commission’s mission is to review Alabama’s criminal justice system and recommend changes that provide just and adequate punishment for crime, improve public safety, address prison overcrowding, and establish a fair and effective sentencing system while providing judges with flexibility in sentencing options and meaningful discretion in imposing sentences.

The sentencing commission has determined public safety and crime prevention can best be improved in Alabama by encouraging the use of alternative sentencing options for nonviolent offenders. To reach these goals, the commission adopted voluntary sentencing standards, which the legislature approved in 2006. Since then, the commission has continued providing recommendations, assistance and training in implementing the new sentencing guidelines.

One of the most exciting initiatives of the Alabama Sentencing Commission is the Cooperative Community Alternative Sentencing Project, project that began in 2007. Funded by the Pew Center on the States, the Cooperative Community Alternative Sentencing Project is a joint venture of the sentencing commission and the chief justice, with technical assistance provided by Vera Institute of Justice and the Crime and Justice Institute.

The ongoing success of the Alabama Sentencing Commission in achieving its mission demonstrates the power of cooperation in providing Alabama with a safer, more cost-efficient criminal justice system. Alabama is moving away from anger- and fear-based “sentencing that ignores cost and effectiveness to evidence-based sentencing that focuses on results,” as Missouri Chief Justice William Ray Price Jr. called it in his 2010 State of the Judiciary address.
Read the full article by Alabama Supreme Court Chief Justice Sue Bell Cobb, and other articles of interest to state leaders, in the 2011 Book of the States

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