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Realistic Preparation for Life Outside Prison

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v. form view we see how the courts have caroused 180 degrees in their holdings while dealing with parallel facts.⁸¹ This about-face in a few cases may not be a trend but it is enough to initiate a trend. This trend hopefully will continue to make illusory transfers lustrous, at least to the Treasury.⁸²

One must concur with the results of *Slade* and what it represents. It fills in the remaining missing-link of Revenue Ruling 71-497.⁸³ The *Slade* court found a transfer due to the substance and not the form of the transaction. The transfer of the term policy in contemplation of death resulted in the inclusion of the proceeds of the policy in the decedent's gross estate.

The position the courts have taken, which coincides with Revenue Ruling 71-497, is that a transfer of a life policy within § 2035 will result in the proceeds to be included in decedent's gross estate. This position can be avoided if the transfer was made in contemplation of death with "lady luck" (more than three years prior to death). In such a case only the premiums paid within § 2035 will be included in the decedent's gross estate.⁸⁴

JOEL RICHARD LAVENDER

Realistic Preparation for Life Outside Prison*

Working inmates of North Carolina's Department of Correction receive no pay for their labors, not even the token payment received by prison inmates in most states. Honor grade inmates participating in the Work Release Program are paid for their work. When asked why this situation exists, prison officials usually state that it is due to lack of funds and the fact that inmates are in prison to be punished and not rewarded for their transgressions. Some of the hard-core conservatives maintain that to pay a convict would be coddling criminals and affording them an oppor-

⁸¹ Compare *Slade*, 488 F.2d 575 (5th Cir. 1973), and *Detroit Bank & Trust Co.*, 467 F.2d 964 (6th Cir. 1972), and *Bel v. U.S.*, 452 F.2d 683 (5th Cir. 1971) with *Gorman v. U.S.*, 288 F. Supp. 222 (D.C. E.D. Mich. 1968) and *Merchantile Trust Co. Nat'l Ass'n. v. U.S.*, 312 F. Supp. 108 (E.D. Mo. 1970).

⁸² Large amounts of tax revenues are at stake. In 1972 over 1.6 trillion dollars of life insurance were in force in the U.S. alone. In 1972 the amount of coverage in force increased about 8.2% over 1971 (which increased about 7.3% over 1970). THE WORLD ALMANAC AND BOOK OF FACTS at 1021 (1974), source DIVISION OF STATISTICS & RESEARCH, INSTITUTE OF LIFE INSURANCE.

⁸³ The other missing-link was found in *Detroit Bank*, 467 F.2d 964 (6th Cir. 1972). That case involved a whole life policy. Therefore, whether it be whole life, term or accidental death, if "transferred" within three years in contemplation of death the full proceeds will be taxed to the decedent's gross estate.

⁸⁴ Rev. Rul. 71-497, 1971-2 CUM. BULL. 329 (1971). See *First Nat'l Bank v. U.S.*, 423 F.2d 1286 (1970).

* This essay was written by Terry M. Luce, presently an inmate in the North Carolina correctional system. See comment on Mr. Luce's essay, *infra* at 282.

tunity to hoard away large amounts of money to be used in financing future criminal capers.

It is my contention that these reasons for subjecting an individual to the loss of dignity and the deprivation that result are, at best, ridiculous. I would ask: Who is more likely to commit a crime against property or person for financial gain—the individual released from prison with a ten dollar bill, a suit of clothes, and no place to go; or the man who is released with several hundred dollars saved from the efforts of his own labor, a marketable skill, and the faith that he has the ability to earn a living in an acceptable manner?

Most people in prison have never been exposed successfully to the Judeo-Christian ethic of hard work and achievement that this country and its economic system are based on. As soon as they are convicted, classified, sent to a field unit, and put to work, they soon realize that there are no positive incentives for productive work or acceptable behavior during incarceration. Controls exercised by the Department of Corrections over its inmates consist of negative stimuli: If the inmate does not work and work well, he is punished. If the inmate does not conduct himself in an acceptable manner, and conform to prison rules and regulations, he is set back for parole or denied a change in custody grade. In the three years that I have spent as a ward of the state, I have never seen any type of positive incentive. Never has there been the incentive of reward for good behavior or satisfactory work—just the threat of punishment for less than acceptable work and behavior.

This negative treatment, coupled with the loss of self-esteem and dignity caused by working without wages, is the main contributor, in my opinion, to the rampant recidivism that this and other states experience. If an inmate were paid a living wage, he would be able to buy the necessities out of the prison canteen, help support his family, pay taxes, keep up his social security, pay his room and board, and have enough saved that upon his release he would not be in financial trouble from the outset of his freedom. The National Council on Crime and Delinquency states that this loss of self esteem and dignity are prime reasons for both the inmates' poor self-respect and lack of respect for the system.¹

In a national survey, it was shown that only six states refuse to pay any wages at all for the work of inmates. Twenty states, the District of Columbia, and the Federal Bureau of Prisons reported that more than 90% of their inmate population held jobs for which they were paid at least a token wage.² Many people will argue that if a wage must be paid to North Carolina's inmates, then it will have to be a token wage. Again, this is a counter-productive system, although better than the present policy. It does

¹ National Council on Crime and Delinquency. Policies and background information. April, 1972.

² NCCP. Policies and background information. April, 1972.

allow some payment for the work done, but does not raise the self-esteem of the inmate, causing him to hold little respect for a system that would exploit inmates by paying ten cents for an eight hour day in the fields or the laundry.

The National Convention on Crime and Delinquency is not the only organization that supports the paying of convict labor. The President's Crime Commission Task Force on Corrections supported efforts to raise inmate wages, stating that higher wages would motivate convict labor to increase production and quality.³ One of the best suggestions of which I have heard was that of the California Assembly Office of Research, recommending that correctional industries be replaced by private industrial programs. Convict labor would be utilized and prevailing wages would be paid, to be supplemented by normal fringe benefits.

I believe that if the citizens of the State of North Carolina are truly concerned with the problems of rising crime rates and law and order, they should take heed of recidivism rates in this and other states. It is generally estimated that between 30% and 75% of the inmates return to prison. Warehousing a man convicted of a crime does not solve the problem. The public should realize that these people who have been punished by society will, in all probability, return to society one day. Unless they are prepared both financially and morally to take their place in the community, they will very likely become wards of the state again as prisoners. The function of the Department of Correction should be more than just "shelving" convicted felons. The Department should also attempt to correct the underlying problems that caused the individual to commit a crime and should return him in a better position to cope with society as a useful and productive citizen. I believe that through meaningful work and study programs, with equitable pay for their labor, the inmates of North Carolina will be better prepared to meet the challenges, the responsibilities, and the rewards of life in the communities to which they return. Until such time as positive incentives are offered to working convicts, they will have little confidence in the system to which they return and the recidivism rate will continue to rise and burden the tax dollar with alarming regularity.

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³ United States President's Commission on Law Enforcement and Administration of Justice. Task Force on Corrections. Report: Corrections. Washington, D.C. 1967.

⁴ California Legislature. Assembly Office of Research. Report on the economic status and rehabilitative value of California correctional industries. Sacramento, Calif. 1969.