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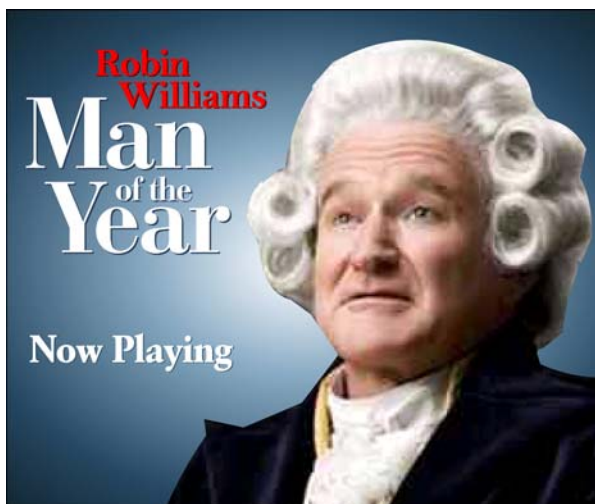
USING SHAME AS PUNISHMENT

Have sex, get infamous

Oakland will plaster names of johns on billboards

- Jeff Stryker

Sunday, March 13, 2005



Residents and merchants in Oakland's Fruitvale neighborhood are mad as hell and are not going to take it anymore. Sick of johns cruising International Boulevard at all hours, driving down property values and creating a market for the sex trade, when there are not enough real jobs to go around, Oakland is about to strike back with a new weapon: shame.

Those caught by surveillance cameras and convicted of solicitation will be at risk of having their faces plastered on bus stop signs or even 10-foot by 22-foot billboards. Clear Channel is providing the advertising space.

"I tell people who say to me that prostitution is a victimless crime they should know about the 217 under-age girls who were arrested for prostitution in Oakland last year," said Oakland City Council President Ignacio De La Fuente. "We're going to shame the out-of-towners and locals who drive to our neighborhood to look for prostitutes," he said.

When is it appropriate to shame or humiliate someone who commits a crime?

Shaming and shunning were popular punishments in 17th century colonial America, when jail was largely unknown. Punishments such as exhibition in the town square in stocks were public on purpose -- conducted in front of a like-minded community that shared the same values and, most likely, the same pew and pastor. Fornication was the most commonly punished offense.

Most remember this scenario from the tale of Hester Prynne spun by Nathaniel Hawthorne in "The Scarlet Letter." She was required to wear the letter "A" sewn to her dress wherever she went, alerting all to her sin of adultery.

"The Scarlet Letter" is still inflicted on high school students coast to coast. But Hawthorne's tale of colonial adultery is better contemplated later in life.

Remember that Hester Prynne lived out her days in the same village, rearing the child of her adulterous relationship and continuing to wear her badge of shame. Children would point and whisper. Clergymen, happening upon her in the street, would gather a crowd for an impromptu exhortation against sin. When she went to church, "it was often her mishap to find herself the text of the discourse."

Hester may even have gotten off easy. In colonial Maryland, the law provided for branding with hot irons: the initial "M" for murderer, "T" for thief, "R" for runaway slave and "H" for hog thief. How about "O" for ouch? Such punishments went out of style after colonial days, being

supplanted by imprisonment and attempts at rehabilitation.

Shame-based punishments came to be derided as atavistic and downright mean. But shame-based punishments never entirely disappeared.

Just this year, Islamic militants in Fallujah, a place the United States is making safe for democracy, paraded vendors convicted of selling alcohol through a public square, naked. This kind of shaming seems a throwback to an era when there was no legal system to mediate between the emotions of the mob and the wrongdoer, something courts and democracy were meant to avoid.

But even some modern legal scholars believe the law is wrong to ignore the emotions of disgust and shame when fashioning penalties. Perhaps shame is the only way to truly express the community's outrage.

Shame has a moral clout lacking in fines or community service; it is cheaper than prison.

Shame re-emerged somewhat in the 1980s, with new academic support and some modern twists. The "perp walk" -- parading suspects in front of television cameras -- became popular. Chain gangs came back. Embroidering a scarlet "A" for adulterer gave way to modern media techniques to alert the community about criminals, especially with sex crimes (johns have also been featured on cable TV shows).

Shaming penalties are often crafted by local judges with broad sentencing discretion and a flair for publicity. The penalties are often the result of guilty pleas and hence seldom subject to appeal.

A judge in Florida ordered a woman to buy a newspaper ad stating she had purchased drugs in front of her children; Kansas City, Mo., officials aired a cable television show featuring pictures of people arrested for prostitution and solicitation; the Maricopa County, Ariz., jail posted its arrest bookings on the Internet.

District Judge Ted Poe, now a congressman from Texas, has a creative streak. He once sentenced a thief who stole pistols from the Lone Ranger (actor Clayton Moore) to clean out police stables. More than 300 of Judge Poe's creative sentences involved "public notice," the type of shaming at issue in the Oakland billboards.

The appeal of shaming punishments is understandable. But stigma should probably be used with caution. It is a messy substance to pour; its taint can spill over -- a problem, because stigma can also be sticky.

A cautionary tale in this regard comes from Toronto, where on April 16, 2003, the local chief of police made a big splash of announcing the names of men caught up in an Internet pornography sweep ("Operation Snowball") at a press conference. James LeCraw, one of the men named, but later exonerated, committed suicide. He blamed the loss of his job, family and friends -- the rapid unraveling of his life -- on the mistaken disclosure. He left a suicide note urging his family to sue. (Clear Channel executives may want to read up on this case.)

Dan Markel, a Washington, D.C., criminal defense attorney, is an expert on shaming punishments. He has written about them in law review articles and in an amicus brief in a case before the U.S. Ninth Circuit Court of Appeals in San Francisco (involving a defendant who stole mail and is appealing a condition of his probation requiring him to stand in front of a San Francisco post office for eight hours with a sandwich board sign reading: "I STOLE MAIL.

THIS IS MY PUNISHMENT").

Markel worries that too much attention is being paid to oddball shaming punishments, ignoring or obscuring larger issues in a highly flawed system of crime and punishment.

"We need alternatives to locking up more and more people for longer periods. Looking for sentencing alternatives makes sense, but the choice is not between locking people up and putting their pictures on billboards. There is a whole range of other possibilities that do not involve humiliation or degradation," said Markel in an interview this week from his D.C. office.

According to Markel, there is little if any empirical evidence to support the marginal benefits of shaming punishments over traditional fines, incarceration or even property seizure. He also reminds that such shaming punishments "risk branding not just the johns, but the rest of their families and kids, too."

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