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Report of the President

Nathan William MacChesney

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REPORT OF THE PRESIDENT.

NATHAN WILLIAM MACCHESNEY.

[At the third annual conference of the Institute of Criminal Law and Criminology in Boston on August 31, 1911, the retiring President, Nathan William MacChesney, Esq., of Chicago, after calling attention to the inception of the Institute in a national convention in June, 1909, which was called in Chicago in celebration of the fiftieth anniversary of the founding of the Northwestern University School of Law, summarized the history of the Institute and passed on to a brief survey of the subject of Crime and Criminology.

He compared the prevalence of crime in England with that in America very much to the disadvantage of our own country. He referred to the fact that certain of our writers and public speakers are accustomed to attribute the frequency of crime in our country to the number of foreign-born in our population. With this disposition of the matter, Mr. MacChesney expressed his dissatisfaction, and the opinion that the cause of the prevalence of crime in our country is to be found in the whole educational treatment of American youths both in school and at home and that, therefore, we must see to it that we let no opportunity pass to arrange the surroundings of our American youth in such a way that we may stimulate the development of right forms of conduct.

Differences in procedure in criminal practice as between England and America were furthermore pointed out, and he proceeded to a brief analysis of the advantages of the English and American systems of procedure. What follows is taken verbatim from the President's report.—Eds.]

PROGRESS DURING THE YEAR.—“The Institute during the past year has accomplished much, and I desire to call your attention to some of the more salient features of the year's administration.

1. The organization of the Institute has been completed. It has been incorporated as a ‘Corporation not for pecuniary profit,’ and the formal matters connected with its plan of organization have been worked out.

2. Problems connected with the publication of the Journal have been largely solved, and it is now on a permanent and satisfactory basis. A large share of the credit in this connection belongs to Dr. James W. Garner, its distinguished and able Editor, and to Colonel

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Harvey C. Carbaugh, its tireless Editorial Director. The September number of the Journal will announce the retirement of both Professor Garner and Colonel Carbaugh, U. S. A., from these positions, and I want to add to what is said in the Journal, by way of appreciation of their services to it and to the Institute, my own personal sense of appreciation of the great service which has been rendered by them to the Institute and the cause which it represents. The Journal will be continued, commencing with the November number, under the Editorship of Professor Robert H. Gault of the Northwestern University, and the direction of Frederick B. Crossley, Esq., of the Elbert H. Gary Library of Law, as its Managing Director. Your President and the Executive Board feel that with these men in charge of the Journal, it has yet a wider usefulness in store for it.

3. It has been the endeavor of your President, so far as possible, to stimulate work throughout the year on the part of both your section and general committees. To this end he has kept in as close personal touch as possible with the chairmen of the various committees and carried on considerable correspondence with them. In order also that he might be sure that the committees were working along the lines desired, and that something was being accomplished, he asked, at the middle of the year, for preliminary reports from the various committees of their progress up to that time, and for what, so far as the chairmen could forecast, would be the probable final recommendations of their committees. Nearly all of the chairmen furnished such preliminary reports. Since that time, some sixty days before the present meeting, every chairman was requested to furnish the President with a copy of the final report of his committee in order that he might be able to report to you somewhat of their work for the year, and be in position to recommend intelligently to you what course of action should be taken with reference to their reports at the present meeting. Practically all of the committees have responded to this final request and I beg to submit to you herewith briefly a résumé of such reports of the various committees.

COMMITTEE (A), SYSTEM OF RECORDING DATA CONCERNING CRIMINALITY.—This committee charged with 'Investigation of an effective system for recording the physical and moral status and the hereditary and environmental conditions of delinquents, and in particular of the persistent offender; the same to contemplate in complex urban conditions, the use of consulting experts in the contributory sciences,' reported at the Washington conference, a system for the recording of such data, which was adopted by the Municipal Court of Chicago at once as

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its standard for the collection of such statistics. It was felt by the committee, however, that the system then presented was too extensive for use in connection with the courts, as time would not permit the collection of such exhaustive information. The committee therefore was continued under the chairmanship of Hon. Harry Olson, chief justice of the Municipal Court of Chicago, with instructions to report a minimum system for the recording of such data. The complete system can be used very satisfactorily in penal institutions where time for full study can be given, but the idea is that some system should be worked out giving the minimum amount of information necessary for use as a working basis in connection with judicial proceedings. Your President recommends that this committee be continued for another year for the completion of the minimum system, the working out of plans for its effective use and of a general scheme for the correlation of the data so obtained.

COMMITTEE (B), INSANITY AND CRIMINAL RESPONSIBILITY. [See the published report in this issue, pp. 521-545.]

COMMITTEE (C), JUDICIAL PROBATION AND SUSPENDED SENTENCE.—This committee was charged with the 'Investigation of the most desirable methods of establishing and extending the allied measures of adult offenders' probation and of suspended sentence, including the consideration of the results of such measures as hereto used.' This committee was created at the Washington conference as a result of the recommendation of chairman of committee B that the question of judicial probation and release on parole should be divided. Hon. Wilfred Bolster of Boston, chief justice of the Municipal Court of Boston, was appointed its chairman. The committee during the year has had under way a further consideration of its report of last year, and has endeavored to secure the fullest possible criticism of that report with the idea of further developing the subject and the submission of conclusions at the present meeting of the Institute. To this end, it has distributed its last report to the judges and district attorneys, having to do with adult probation, together with an elaborate list of questions covering the various aspects of probation and suspended sentence. They have endeavored to obtain a full list of all interested parties to whom such inquiries might be sent. They have printed copies of the report, when necessary to that end, and have spent a great amount of time in the preparation of the list of questions included. Your President recommends the continuation of this committee for the coming year.

COMMITTEE (D), ORGANIZATION OF COURTS.—This committee was charged with 'Investigation of the possibilities of the unification of

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the state and local courts, so as to do away with the burdensome cost of transcripts, bill of exceptions, writs of error, and so forth, allowing the appellate tribunal to pass upon and use the same papers and the original evidence and comments used at the trial and to take further evidence on formal matters or matters not controvertible for the purpose of upholding judgments.' Hon. Roscoe Pound, formerly of the Supreme Court of Nebraska and now professor of law in Harvard University, was appointed chairman of this committee. Professor Pound has devoted the energies of his committee largely to the accumulation of the necessary data. Your President recommends the continuation of this committee for another year in order that this work may be completed.

COMMITTEE (E), CRIMINAL PROCEDURE. [See published report in the January issue of this Journal.]

COMMITTEE (F), INDETERMINATE SENTENCE AND RELEASE ON PAROLE. [See published report in the January issue of this Journal.]

COMMITTEE (G), CRIME AND IMMIGRATION. [See the published report in this issue, pp. 546-567.]

COMMITTEE NO. 1. CO-OPERATION WITH OTHER ORGANIZATIONS.—This committee was created for the purpose of bringing the American Institute of Criminal Law and Criminology and the various organizations that are promoting investigation of those problems that claim the attention of the Institute, into closer relations. More particularly it is the function of this committee to bring the organizations which would be in position to make use of and carry into effect, the recommendations of our various committees into working relations with the Institute. It is desired also to bring the American Institute into some relation with the various states and the federal government in such a way as to transmit the work of this Institute to the officials thereof for their information and consideration. Dr. Charles R. Henderson, retiring president of the International Prison Commission, was appointed chairman of this committee, but owing to his absence in Europe, Hon. W. O. Hart, Louisiana Commissioner on Uniform State Laws, was appointed acting-chairman and has carried on the work of the committee during the year with tireless energy, with the result that the American Institute has now practically a definite relation with nearly all organizations interested in the subjects which we are considering, including the American Bar Association, which has at its present meeting recognized the American Institute officially by appointing delegates to attend this meeting, and by instructing its secretary to include hereafter the program of the Institute in that of the American Bar Association, and also to in-

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clude in the annual volume of the American Bar Association, a summary of the proceedings of our annual conference and an index to our various publications not exceeding fifty pages in length. In addition to the various organizations which have appointed delegates to, and committees for coöperation with, the American Institute, nearly thirty states through their respective governors have appointed official delegates to attend this meeting. Your President recommends the continuance of this committee for another year.

COMMITTEE No. 2. COMMITTEE ON TRANSLATION OF EUROPEAN TREATISES ON CRIMINAL SCIENCE.—As reported by the committee last year, this committee undertook, in accordance with the resolution creating it at the Chicago conference, the translation and publication of the most important treatises on criminology in foreign languages in order that they might be made readily accessible in the English language to those who are interested in the various subjects. The committee has completed arrangements for the publication of the nine leading works in the field of criminology.

After the Washington Conference, your President appointed Hon. John H. Wigmore, chairman of this committee. The committee reports that its work this year has consisted largely in carrying out plans of last year. Three of the nine volumes of the Modern Criminal Science Series have appeared in print, and the reviews have shown great popular interest in them. These three are the volumes of DeQuiros, Gross and Lombroso. The committee reports also that the volume by Salèilles is in press, and that the volumes by Tarde and by Aschaffenburg will be finished by the translators this year, and will be the next to be printed. The committee calls attention also to the Continental Legal History Series edited for the Association of American Law Schools. Your President recommends the continuation of this committee for the coming year.

COMMITTEE No. 3. COMMITTEE ON CRIMINAL STATISTICS. [See published report in this issue, pp. 568-572.]

COMMITTEE No. 4. ON STATE BRANCHES AND NEW MEMBERSHIP.—Your President recommends that this committee be continued. The object of the committee is to stimulate interest in the organization of State Branches, and to advise means of increasing the membership of the Institute and also to add to the list of those persons who are taking special interest in the study of Criminal Law and Criminology. Professor Eugene A. Gilmore of the University of Wisconsin Law School was appointed chairman of this committee. It has done a large amount of effective work, which has resulted in the organization of branches in

Wisconsin, Minnesota, New York and Illinois, while steps have been taken toward the organization of state societies in California, District of Columbia, Massachusetts, Michigan, Missouri, Pennsylvania and Washington. It has also worked out a model plan of construction for the state society and completed a scheme for the articulation of the state society with the American Institute and the relation of membership in the state society to membership in the Institute. The committee will submit as part of its report the model form of constitution. Your President recommends the continuation of the committee for another year, and that the model constitution for state societies, to be submitted in its report, be published together with the constitution of the American Institute, and such other material as the Executive Committee may deem wise, in the form of a bulletin for distribution within the coming year, by this committee.

This review of the work of the committees, both sectional and general, gives, in fair measure, the activities of the Institute during the past year. Together with the work done by the Journal and the work of your officers and executive board, they constitute the working force of the Institute between conferences. Did time permit I should be glad to review briefly the various state conferences which have been held. Those which have been held in Wisconsin and New York were of particular interest. The conference on Reform in Criminal Law, which was held in New York at Columbia University under the auspices of a number of organizations, both local and national, was one of great interest, and the volume which was published containing its proceedings is one full of suggestion to any student of the subject. The conference was addressed by the President of the United States and attracted national attention. I had the honor, as your President, of speaking at the dinner with which the conference closed and for your information I desire to summarize briefly my recommendations at that time, which were as follows:—

First: No judgment should be set aside or reversed, and no new trial granted on the ground of misdirection of the jury, of improper admission or rejection of evidence, or of error in any matter of pleading or procedure, unless it shall appear to the examining court that such error has affected the substantial rights of the parties. Such a provision was originally drafted by President Taft, has since been recommended by the American Bar Association, and has been passed by the Congress of the United States. To that end the constitutional changes may be necessary to allow consideration of the facts by an appellate tribunal.

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Second: The right of the prosecution to comment upon the defendant's refusal to testify should be secured.

Third: The right to use private confessions obtained by officers of the law (commonly called the 'third degree') should be abolished. The same right of change of venue should be given to the state as to the accused, and removals under proper restrictions from one country to another should be allowed. This doing away with the private confessions and granting to the prosecution the right to comment upon a defendant's refusal to testify will have important results. In all probability the defendant will testify more often than not, and we shall not be under the constant danger of having the sympathies of juries appealed to on account of the use of 'third degree' confessions, as they are called. As a matter of fact, such confessions are often obtained under conditions which ought to discredit them.

Fourth: The provision requiring unanimous verdict should be done away with; and in all, except capital cases, a three-quarters verdict should be allowed.

Fifth: The amendment of indictments should be allowed at any time provided the character of the charge be not changed, and provided the accused be given the right to prepare any additional defense made necessary by such change. No substantial rights of the defendant would in any way be sacrificed by such a provision, and those disreputable and disgraceful cases would be done away with in which convictions have been set aside on the ground of some trifling technical error in the indictment. You are all probably familiar with the line of cases referred to, notably the Missouri case of a crime against a woman, a case reversed by the Supreme Court because of the omission of the word 'the' in the phrase 'against the dignity and peace of the state.' That sort of thing discredits the law, and as Solicitor-General Lehmann has said, 'places the definite article above the sanctity of woman in the state of Missouri.'

Sixth: Instructions should be prepared by the Court, with the assistance of counsel, who should thereafter be limited to objections raised at such time. This idea of placing upon the trial judge, in the hurry and confusion of an important trial, the entire burden of the charge and of allowing counsel at their leisure to seek out the highways and byways of possible error, when such error could have been corrected at the time of the trial, is a mark of barbarism.

Seventh: The power of the trial judge should be habilitated, so that he can exercise his common law powers with the right to summarize and comment upon the evidence, as in the federal courts, and

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cease to be what President Taft has designated so aptly as a mere moderator in a religious assembly.'

Eighth: The same number of challenges should be allowed to the state as to the accused, and both sides should be placed, as far as possible, upon the same footing, without undue hardship to the accused. Personally, however, I do not believe in what is so often advocated, namely the right of appeal on the part of the state. The expense, notoriety and worry incident to a properly conducted, single trial for a criminal offense, is all any person accused of crime should have to face, and if technicalities are eliminated, and the state has a fair opportunity to convict, it should be limited to the single trial without appeal. Under present conditions it would indeed seem as if the state should have the right of appeal, but it seems to me far better that these other improvements should be effected, and the state limited to trial without appeal, because oftentimes it takes practically all that the poor defendant has in order to have his case properly defended.

Ninth: Public offenders are sometimes advocated. I do not believe that such officers will accomplish what its friends think they may. Such defenders, however, should by all means be provided if an appeal is to be allowed the state in order to minimize the burden on the accused, who is often, without means to face the power, prestige and resources of the state.

Tenth: Where the accused takes the stand in his own behalf, he should be subject to cross-examination, and should be taken to have waived his constitutional privilege against self-incrimination.

Eleventh: The principle of second jeopardy should not apply in case of mistrial or retrial. It is absurd, under present conditions, to have a prisoner practically escape all prosecution because of a mistrial, and I do not believe that the doctrine of jeopardy was ever intended to govern such conditions. The sooner we do away with the idea that it does cover it, the better.

Twelfth: An indictment should be sufficient if it specifies a crime as to time and location, with sufficient particularity to prevent a second prosecution. It would seem as if that were sufficient, and as a matter of fact, in England it is so. They do not have that absurd verbiage and constant repetition which we have here. A study of conditions in England has recently been made under the auspices of the American Institute. The report shows that substantial justice has been done under their rules with reference to indictment.

Thirteenth: Press comments should be stringently limited to (a) actual report of proceedings (b) without comment, editorially or other-

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wise (c) and without comment from the state's or district attorney. Most of us have got tired of having the district attorney or the state attorney say what he expects to prove, commenting on the evidence. Too often statements are given out for publication in connection with criminal prosecution which cannot possibly have come from any other place than the state's or district attorney's office.

Fourteenth: Jurors should not be disqualified because of the reading of accounts or hearing of rumors regarding alleged crimes, but only when they cannot give a fair verdict because of a fixed opinion.

Fifteenth: Expert testimony should be rigidly regulated, and if experts are not furnished by the state, their qualifications should be passed upon by it, their fees limited, and contingent fees absolutely prohibited.

Sixteenth: The state should have the right, under proper restrictions, to compel accused persons to produce any paper or thing of importance in connection with the trial.

Seventeenth: Jury service should be compelled on the part of practically every citizen. To that end the time of such service should be so fixed as to give the least possible inconvenience to those called for such jury service.

Eighteenth: A transcript of the evidence of a witness on a former trial, when it is impossible to produce, should be competent evidence in a second trial.

These are all well-considered reforms. Many of them have already been tested in various jurisdictions, and their enactment in any one jurisdiction will go far to remove the present widespread criticism of them. It is well to remember in this connection that the courts and the law bear an unjust burden of criticism everywhere because of the massing of the various defects in each of the state jurisdictions and the federal courts in such a way as to compare those defects with the results achieved in a single jurisdiction, such as England.

It is the holding of state conferences such as those to which I have referred, to which the Institute must look chiefly for its largest influence on state legislation, leaving to the American Institute in the national conference the formulation of general policies and the stimulation of the various state societies to carry on the fullest amount of work possible in their respective states.

I wish to thank the members of the Executive Board and the various committees for their cordial coöperation during my administration,

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and, in closing, to assure the American Institute of my hearty appreciation of the honor they conferred upon me in electing me their president, and to assure them also that while the duties have been considerable, the opportunities which presented themselves to forward the great work in which we are engaged have more than compensated for the time required."