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WHAT MAY BE DONE TO FORWARD THE JUDICIOUS APPLICATION OF THE PRINCIPLE OF INDIVIDUALIZATION OF PUNISHMENT BY THE JUDGE WHO ASSIGNS THE PENALTY TO BE INFLICTED ON THE OFFENDER?[1]

HON. SANFORD BATES[2]

"One of the most insistent demands of today is for individualization of criminal justice, for a criminal justice that will not return recidivists through the mill of justice periodically at regular intervals, nor on the other hand divert the youthful, occasional offender into an habitual criminal by treating the crime in his person rather than the criminal."

These are the words not of a sentimentalist, but are the well-considered conclusions of the dean of the law school of Harvard University, perhaps the most prominent educational university in my country.

How can a magistrate apply the modern principles of individualization, in response to this demand, without endangering the safety of the community?

It is inadvisable in this short treatise to enter upon a discussion of the principal schools of thought which are so admirably contrasted in the book of Prof. Saleilles, published under the auspices of the Washington Conference.[3]

The classic school, largely followed in Germany, England and Canada, insists upon a high degree of personal responsibility. The individual's importance must be submerged in the welfare of society as a whole. Unless he is held responsible for his acts and punished for infractions of the law, others will follow his example. The community owes it to itself, and to those who come after it, to insist that the law shall be upheld, that the individual shall be punished, and that responsibility should be recognized. This may be referred to as the practical, classical, legalistic, or social point of view.

In almost direct opposition to this school of thought appears the Italian school, largely followed in Italy, France and America, whose

[1]Read before the International Prison Congress, London, August, 1925.

[2]Commissioner of Correction for Massachusetts, U. S. A., President American Prison Association, Vice-Pres. Am. Inst. Crim. Law and Criminology.

[3]The Individualization of Punishment, Raymond Saleilles.

line of thought has been so brilliantly developed by a group of Italian criminologists. This school insists that the responsibility of the individual is diminished, if not obliterated, through the interplay of social forces, heredity, mental inadequacy, and other causes. It holds that instead of being the master of his own destiny, a free soul with a free will and free opportunity to express that will, the conduct of the criminal is largely determined for him by the interplay of forces over which he has no control. While this school may not definitely abandon the efficacy of punishment as a social deterrent, it contends that only as we proceed to cure the individual and remove the causes which determined his criminality, can we in the long run protect society from crime and its ravages. This point of view has been called the sentimentalist, the Italian, the determinist, or the individualistic conception of punishment.

The polemical discussion which has raged between these two schools has been brilliant and helpful in the extreme. It is doubtful, however, whether any one individual can reconcile these two points of view. An eloquent prosecutor or trial justice may expound the theory of responsibility and social protection in a way which would convince his hearers that only through the old-fashioned notion of chastisement and example may society be protected; but the same body of hearers will the next day be convinced, upon hearing a practical psychiatrist or scientific prison man defend the logic and rationality of the individualized treatment of the criminal himself.

Many distinguished citizens in England and America at least have discussed this troublesome problem, and a partial list of such articles is given in an appendix to this paper. Judge Meek, of Texas, states the case as follows:

> There has existed for many decades a spirit and determination on the part of the makers of penal codes and the courts to measure the criminality of acts not only by their objective, but their subjective qualities as well, and to assess punishment according to the true responsibility of the offender.
>
> There is now a growing social tendency, a humane and laudable tendency, toward the enactment of laws providing for individualization of the punishment to be meted out to the offender, having reference not alone to the objective and subjective nature and quality of his act, but also to the true nature of the individual, to his age, his past record and the possibility of his redemption to social and moral worth.[4]

J. P. Alexander, former prosecuting officer of Mississippi, says:

[4]Should the Punishment Fit the Crime or the Criminal, Hon. Edward R. Meek.

The treatment of criminals today is and must be a scientific and psychiatric, as well as a legal question.[5]

John A. Hamilton, Esq., of Buffalo, says:

We shall be concerned, so far as possible, to let the punishment fit not the crime, but the criminal. We shall examine his crime not more closely from the viewpoint of its conventional culpability than from that of its symtomatic character.[6]

Writers on both sides of the argument agree that it is the certainty rather than the severity of punishment which deters from crime. This paper will not concern itself with the discussion as to how criminal justice may be made more speedy, accurate and impartial. The writer ventures the opinion, however, that there is a distinct tendency in the application of our penal law away from the classic theory and toward the belief in the treatment of the individual, while he is before the court, through a realization of his individual needs, and the imposition of such treatment as is indicated by those needs.

This tendency toward individualization is attested to in many countries by the establishment of classified institutions demanding the sorting out of criminals, not in accordance with the crimes they have committed, but in accordance with the personalities which they possess. And the growth of this idea is further evidenced by the adoption of the many modern devices for the pre-commitment care and treatment of the offender.

Prof. Saleilles, in his book, refers to three kinds of penal individualization: (1) Legal individualization, resulting from classifications laid down by the legislature; (2) judicial individualization, and (3) administrative individualization, being that attempt on the part of those in charge of our penal institutions to apply the proper remedial treatment to those in their charge.

Obviously, the title to this paper intends to restrict the discussion to the second kind of individualization, and to provide a discussion as to ways in which the magistrate presiding over the criminal session may be aided in his most difficult task. And it is, we must all admit, a task of great delicacy and difficulty. Here is a lawyer, impelled by his early training and associations to follow precedent. As a judge, he has sworn to administer the law as laid down by such precedents, and to protect society by the imposition of penalties; but as a human being, he attempts from day to day to understand that other and less fortunate human being who comes before him in the guise of a criminal

[5]The Philosophy of Punishment, Hon. Julian P. Alexander.
[6]Making the Punishment Fit the Crime, John Alan Hamilton, Esq.

Where does his obligation to society stop and his duty to the offender begin?

We in America believe that if penology has made any great advance in the last century it is a development of the belief that the more we look into the individual's case as that of a human being, study it, diagnose it, prescribe for it, and administer the cure, the more nearly do we reconcile the conflicting schools of opinion referred to above.

One of the greatest contributions made to the science of individualized punishment is by Dr. William Healy, in his book entitled "The Individual Delinquent." Dr. Healy spent many years in a careful study of confirmed juvenile offenders in the cities of Chicago and Boston, separated by a thousand miles. After a lapse of time he re-investigated the histories of these offenders to determine what had become of them. He found that "of 420 in the Chicago group, 109 went back to the community on probation, and 311 went to juvenile correctional institutions. Of the same total in Boston 317 went out on probation, while 83 went to institutions. Of the Chicago cases 204 turned up in court again. Boston heard from only 74 again. But what is of still greater significance, 157 of the Chicago offenders appeared later in penal institutions for adults. Among these were 13 murderers and 39 professional criminals. Of the Boston group only 10 were later convicted, all of them for minor offenses."

The City of Boston has been noted for the scientific character of its preventive social work. Organizations exist to combat almost every kind of social maladjustment which might tend toward crime, poverty or disease. Chicago, on the other hand, with its more rapid growth, has found difficulty in organizing along preventive lines. If evidence were needed of a practical, statistical nature to support the contention that individual treatment and the removal of causes is the highest protection of society, the above testimonial should supply that need.

Assume, then, that the judge is conscientiously attempting not merely to wreak the vengeance of society upon the victim in the dock, but wishes to set himself to the solution of the tremendous problem of what to do with him and how to correct him. The following suggestions are submitted with no dogmatic sense of their finality, but merely as indications of progress along the line of individualization, or as possibilities of future development. Some of the ideas proposed have long been adopted and are in daily use in America. Some of them have yet to be realized in any general sense.

1. Divisions of the Trial Court

Among the prominent recognitions of the soundness of the theory of individualization of punishment in America is the development of the juvenile court. Every state but one of the forty-eight has at least separate sessions and separate establishments (although possibly presided over by the same judge) for the treatment of juvenile delinquents. Many of our states have domestic relations sessions of the trial courts, for specializing in marital troubles. The juvenile courts of Cincinnati under Judge Hoffman, Denver under Judge Lindsey, and Boston originally under Judge Baker and now under Judge Cabot, are noteworthy examples of what such classification may accomplish. Examples of the domestic relations sessions may be found in Chicago under Judge Olsen and in Boston under Judge Bolster.

Furthermore, if judges are to individualize punishment, they must understand the individuals. In addition to being lawyers, they must be sociologists.[7]

It will not be enough, therefore, that circuit judges shall experiment at more or less frequent intervals with the disposition of criminals. Certain members of the bench should make that their life study and work.

Recommendations

a. The work of the criminal court should be divided so as to facilitate the work of individualization, into juvenile courts, domestic relations courts and courts dealing with the adult offender.

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[7]As to the performance of such duty, Judge Osborne, of New Jersey, in the Journal of Criminal Law and Criminology, says: "Their guilt having been judicially established, the criminals appear before the judge for the imposition of such penalty within the limits of the law as he may prescribe. Upon him rests the final responsibility. How important his decision, what infinite care should be exercised by him that punishment shall be adjusted accurately to the crime and to the needs of the prisoner. The consequences are momentous. The prisoner may have, probably has, a family dependent upon him for support; consider what it means to them. He may be a man of good purpose and high ideals subjected to too great a temptation; he may be youthful and led stray by vicious companions; he may be a first offender, or perhaps a victim of circumstances; possibly he is mentally irresponsible, or depraved or vicious or an old offender. Each case presents a separate field of study.

"Judges administering the criminal law should have some knowledge of scientific penology, sociology and psychology, criminal anthropology and statistics. They should have an intimate familiarity with penal institutions and a keen insight into human nature. . . . Uniformity must be attained under our present system by reaching a common understanding and acceptance of corresponding methods. Until the importance of a correct knowledge of the problem is realized and an earnest effort is made by the judges of the criminal courts to meet the situation by suitable preparation, little progress will be made."

b. A certain definite member of the trial court judges should be constantly assigned to criminal work, composing a criminal division.

2. The Psychopathic Laboratory

A practice which has crept into the conduct of criminal cases and which even the most uninitiated realize has become almost farcical in its abuse, results from the competitive testimony of hired alienists in criminal trials. Many are contending that the determination of insanity is not a judicial but a medical matter, and are looking forward to the time when impartial, publicly paid alienists will determine this fact instead of leaving it to the jury to guess between two opposing groups. We are nearly all agreed, however, that if and when the penalty is to be imposed, or in the language of the determinist school, the treatment is to be ordered, by the judge, not to satisfy the public clamor but to meet the needs of the individual, it goes without saying that he must *know* the individual; and this knowledge should not be confined to the casual observation which the judge is able to give to the case from the bench. The judge should know regarding the criminal, his physical ability to battle with the problems of existence, his mental capacity, his environmental history, and the degree to which the forces of heredity and social intercourse have determined his character. This can be done best through the establishment of a psychiatric clinic or psychopathic laboratory attached to the court, to which cases may be referred before trial or at least before sentence.

Most courts today are so organized that positive insanity may be recognized and treated and the sufferer therefrom removed from criminal jurisdiction. A few so recognize feeble-mindedness.[8] All will some time recognize the importance of psychopathic or constitutional inferiority and its bearing upon crime.

Recommendations

a. Every criminal judge should have attached to his court a psychopathic laboratory, presided over by a competent psychiatrist.

b. In the absence of such arrangement, judges should avail themselves of the existing machinery in their jurisdiction to ascertain the necessary facts.

[8]Copy of the Massachusetts statutes in this regard is contained in the Appendix.

3. Probation

As soon as the judge has turned from the rigid application of the doctrine of strict and entire responsibility, he finds many cases coming before him in which the need for public protection is inconsequent, in which punishment by imprisonment would be futile, if not dangerous, but in which case the offender needs restraint and guidance and encouragement. The laws of most of our American states provide the judge a method whereby this form of individualization may be accomplished. The working of the probation system, so called, in the United States has saved many an offender from the stigma of a prison sentence and restored him to the path of probity. There should be attached to every criminal court one or more sympathetic, scientifically-minded, impartial officers, of each sex, prepared to recommend to the court and carry out its directions with regard to such individual treatment, short of confinement, which the offender requires.

Probably no movement in modern penology has caught the public imagination with the same success as has the probation movement. In my state of Massachusetts there are today four times as many convicted criminals being assimilated in the community on probation as are confined in our penal institutions. The first paid probation officer, the first state probation commission, and the largest use of the system is accredited to Massachusetts; and yet our state is one which has been peculiarly free from the ravages of the so-called "crime wave." No one can gainsay the fact that the careless and extensive use of the practice of probation will cause those followers of the classic school of thought much uneasiness; but it is an essential and vital concomitant of any judicious application of the principle of individualization of punishment. The power in the judge to place on probation should include the power of imposing a sentence and suspending its execution.

Recommendations

a. A paid probation force of sufficient size and intelligence should be attached to every criminal court.

4. The Function of the Judge

If our previous recommendations are sound, we have provided our courts with humane judges, experts in their line, authoritatively advised by scientific men, and with a corps of probation officers or social workers at their command. The court is equipped to understand the needs of each individual prisoner. What is he to do with them? Some of

the efforts made to guide judges in the imposition of penalties are recounted in papers referred to in the appendix to this article. Many decided cases of our courts in England and American jurisprudence have wrestled with the problem of uniformity of sentence. The difficulty which our courts experience, and which our legislatures recognize in laying down hard and fast rules for the punishment of offenses, but emphasizes the tendency towards the newer conception that it is the criminal at which we look, and not the crime which he has committed. If we are to venture one dogmatic statement in this paper it might well be the following: the adoption of any code, legislative or judicial, or any set of rules attempting to standardize or make uniform the sentences of our courts is absolutely opposed to the theory of the individualization of punishment. Legislatures will, however, provide limits to the actions of our courts and the courts will for their convenience and for the impression which such action makes upon society, fix certain minima of punishment. The attempts just referred to by legislatures and judges themselves to standardize punishments were no doubt intended to protect the people against arbitrary or cruel and unusual punishments. From our present point of view, however, the more we examine the personality of the defendant and attempt its correction, to a correspondingly greater extent must we free the hands of the authority which prescribes the treatment.

As important today as the finding of guilt is the question of disposition. Should the individual be sent to the traditional prison or to a reformatory or Borstal institution? Should his treatment involve education in the school of letters, industrial training, agricultural occupation, or a combination of the three? To what extent should a strictly ordered discipline form a part of his treatment? Does he need the close restraint and supervision of a cell or the partial freedom of a prison camp? To what extent does he need physical rehabilitation or mental training?

The reformation of the criminal and the protection of society, it is submitted, depends as much upon the proper solution of these questions as it does upon the mere fact of guilt or innocence.

There is much contemporary literature also upon the function of the judge presiding at the criminal trial. We may refer to five of the steps in the disposition of the ordinary case:

1. The finding of guilt or innocence.

2. Determination of the fact as to whether the crime warrants punishment.

3. Fixing the quantum of punishment.

4. Choice of the institution in which the punishment is to be administered.

5. Kind of treatment there to be administered.

How many of these acts should be performed by the judge? We find ourselves in agreement only on the first one. It may be admitted that the finding of guilt or innocence is a judicial question and that the jury, under the guidance of the judge as to questions of law and evidence, are the proper tribunal to dispose of that question.

Historically, the other four questions have been largely determined by the judge at the trial. Logically and scientifically, there is a great question whether they should continue to be so decided. Having determined the fact of guilt, are not these other matters administrative rather than judicial? Traditionally, the English courts have said in effect, "John Smith, you are guilty; you shall serve ten years of penal servitude in Pentonville Prison and five years of preventive detention in the appropriate penal establishment;" thus deciding not only his guilt but the length of time he shall stay in the prison, the place where he shall go, and the kind of punishment he shall receive.

On the strict application of the classical viewpoint this is defensible. If, however, the offender is to be turned over as a vicious, sick or ailing personality, the question of his punishment depends not upon his crime but upon his peculiar type of personality; the length of punishment depends upon his reaction to treatment; and the place and character of such punishment likewise depend upon his needs and his reaction to correctional treatment.

I shall defer for a moment the discussion of the clearing house idea and assume, for purposes of discussion under this heading, that the judge is to retain authority to deal with all five questions. If such be the case, in addition to his familiarity with the offender, he should obviously have a first-hand familiarity with the places to which he is to be sent for reformation. Every judge should, therefore, visit each and every institution to which he may commit offenders. If he will not do this voluntarily he should do it by compulsion of law. It is useless to provide classified penal institutions and insist upon their being managed in accordance with scientific and humane principles unless the active and intelligent co-operation of the courts in carrying out such classification can be secured.

To quote one of our most vigorous criminal justices, Judge Kavanagh, of Chicago: "If we can avoid doing so, the last place on earth to send a man or woman is to prison. No matter what we may plan, try or prate about his rehabilitation and reform, he comes out of

prison to remain forever a pitiable thing. . . . Children restrained in properly adjusted reformatories may have a good chance. But the judge who will knowingly send a hardened criminal to live in such a reformatory among those children, ought to be made to live there himself."[9]

With regard to the kind of punishment, it is very largely the practice in America to leave that entirely to the prison authorities. The judge determines guilt, decides on punishment and sets certain minimum and maximum limits to the sentence, and quite often, if not generally, determines the institution in which such punishment is to be administered. But the kind of treatment there accorded the criminal is not his concern. While many of our laws provide for solitary confinement and authorize the judge to determine this fact, as a practical matter they do not. Whether a man shall work at prison industries, attend school, be released to a prison camp in comparative freedom, or even receive his parole depends upon his conduct and reformability and is determined by those in charge of our penal institutions. It would seem to the writer that this system is preferable to the system existing at least on paper in England whereby the judge determines in advance the proportion of time which the criminal shall spend in each form of penal detention.

Recommendations

a. So far as the law prescribing standards of uniformity in punishment will permit him, the judge should order such treatment of each individual criminal as will be most likely to effect his economic independence, intellectual integrity, and moral regeneration.

b. He should avail himself to the fullest extent of the equipment furnished by the government for the classification of prisoners.

c. He should set only such limits to the length of time of punishment as will assist the prison authorities to bring about the result.

d. He should be obliged to acquaint himself, by personal visit and frequent inspection, with every penal institution to which he may make commitments.

e. Beyond the designation of the appropriate institution, he should not attempt to determine in advance what kind of treatment the offender should receive there.

5. Clearing House or Classification Prison

Thus far we have enumerated what seemed to us some of the helps toward the establishment of a proper system of individualization

[9]The Adjustment of Penalties, Hon. Marcus A. Kavanagh.

of punishment. Most of these programs have been put into practical operation, at least in America, and we think are proving their worth. A classified court, a psychiatric laboratory and a socially-minded probation service are adjuncts to all progressive courts. It should be the concern of this association to urge the general adoption and expansion of these programs. The extent of the judge's authority is being seriously debated today, and a discussion of this particular topic represents a mixture of actual practice and pious hope. The fifth suggestion, however, is one which is still largely in the realm of speculation. So far as I know, the idea has never been put into practice in its entirety. The term clearing house, as the word is used by penologists, connotes an intermediate tribunal between the committing magistrate and the place of punishment or detention, which shall take over, as an administrative rather than a judicial duty, the determination of the kind of treatment needed by the particular offender. As hinted above, many thinking people insist that the court should confine itself to the adjudication of the fact of guilt and should assign to an administrative body of experts the treatment of the social condition disclosed thereby. This again would seem to follow logically from the development of the ideology of the determinist school. Only so long as we look upon punishment as a legal retribution can we defend the act of a court in meting out the quantum of such retribution. When we begin to look upon punishment as a remedial matter, must we not delegate it to those more conversant with human personality and the dependent sciences of psychology, psychiatry, neurology, physiology and sociology?

It is not surprising, therefore, to find writers on criminology prophesying the time when the committing magistrate will cease his connection with the case upon the finding of guilt. A defendant will then be turned over to a place of detention, there to be examined at their leisure by a board or committee composed of a physician, a psychiatrist, a sociologist and one or two practical prison administrators. They will prescribe the length of time a man should be restrained, the institution to which he should be committed and the kind of treatment which he should receive. They might modify their prescription from time to time, thus having an advantage over the court. They should have the free power of transfer from one institution to another and would undoubtedly seek in every way to bring about the speedy reform of the individual, having in mind all the time the important fact that society should be protected from his anti-social acts. We might thus expect to find the indeterminate sentence used to the fullest extent. We might expect to find, therefore, a convict guilty of a rather trivial crime, but

with a record and personality which indicated persistent recidivism, committed for a long period of incarceration. On the other hand, we might find the man of exceptionally high capacity guilty of an accidental offense under great provocation, returned to the community after a comparatively short period. The great State of New York, ever in the van in penological thought and action, has contained the most noted advocates of this system.

"The time-honored practice of entrusting to the judge under whom a prisoner is convicted of a crime involving the punishment of imprisonment, a wide discretion as to the penalty to be imposed has resulted in such grave abuses of justice as to call for its restriction. This discretion has never in our penal history been unlimited; it has been materially restricted by the present law providing for the indeterminate sentence within limits fixed by statute. In the opinion of your commission it should be further restricted in the matter suggested, vesting in another court or board of judicial dignity and authority and acting for the whole state, the jurisdiction to determine the period of imprisonment to be inflicted in each case."[10]

As yet, however, the conservative elements in our commonwealths have not been convinced that the advantages in the way of intelligent remedial treatment would outweigh the danger of autocratic assumptions of power, if an authority so grave and far-reaching were removed from the duly constituted courts. The present problem must be, therefore, to secure that calm, scientific, humanitarian consideration for each individual case and a close connection between the authority which prescribes the remedy for such case and the administrative body which carries it out, and at the same time to preserve to the people that control over such agencies as is demanded in a democratic community.

The establishment of the classification prison has occurred to many as a desirable step toward the establishment of the clearing house system. The State of New York has in mind the designation of the famous Sing Sing Prison, 30 miles north of New York City, as such an institution, and is shaping its building program to that end. Every indication points to the establishment within a very few years of a modern classification prison, containing a clinical building, hospital equipped for medical and surgical work, and a psychiatric laboratory, to which all prison commitments shall be made and there sorted out for transfer to the other state prisons and reformatories, as recommended by the classification committee.

In quaint but virile language the Rev. Aubrey Shipley discussed

[10]Preliminary Report of the Commission of Prison Reform of the State of New York, p. 14; New York, 1914.

the almost unbelievable success which attended the adoption of intermediate penal establishments in Ireland in a book entitled "Purgatory for Prisoners," published in 1857.

His purgatory was located apparently between the prison and the return to society. Far be it from me to make a suggestion as to the proper location of this ecclesiastical tribunal, but it would seem that if there is to be a penal purgatory here on earth it would be much more effective to have it located between the community and the prison, and a clearing house or classification institution offers just such an opportunity.

Recommendations

a. The inability of the trial judge to prescribe the kind of treatment necessary in each individual case and to modify such treatment from time to time will eventually require the establishment of another tribunal known as a clearing house or classification commission, into whose care each individual delinquent, upon the finding of guilt, shall be committed, with the recommendation of the judge as to the extent, nature and character of punishment that the individual should receive. With this recommendation in mind and upon a complete examination of the subject, such clearing house commission shall administer the proper remedial treatment.

The important questions of release without sentence, probation for petty offenses, the indeterminate sentence and the question of parole all bear indirectly upon this matter, but are assigned under other topics and are therefore not discussed in this paper.

There seems to be no more fitting way to conclude these suggestions than with the statement of Prof. Saleilles: "The conception of punishment implies responsibility. . . . But the application of punishment is no longer a matter of responsibility but of individualization. It is the individual crime that is punished; but it is the consideration of the individual that determines the kind of treatment appropriate to his case. . . . The era of responsibility is completed; that of individualization is beginning. This does not mean the renunciation of the idea of responsibility, but only the renunciation of the dangerous and puerile fiction, whereby positive and practical applications were derived from merely abstract premises.[11]

[11]Individualization of Punishment, Raymond Saleilles, 1913, p. 181.

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Appendix A

The Classification Prison[12]

Most of the inmates of the state prisons are abnormal; over 59 per cent are mentally subnormal. A large proportion have venereal diseases when they are committed. Many of them have other physical disabilities. Some of them are drug addicts.

Large manufacturing industries are carried on in the state prison. A good deal of skilled labor is required. The industries have never yielded commensurate returns, largely on account of the poor quality of labor.

The state is divided into three districts, and prisoners are committed in the first instance to the state prison in the district. The Metropolitan district, for which Sing Sing Prison functions, commits about 75 per cent of the inmates of all the state prisons. Transfers of the inmates among the prisons are continually going on.

After a good deal of study and discussion it was decided that the welfare of the prisons would be promoted if all the inmates of the state prisons were, in the first instance, sent to one prison in which a clearing house was established, where they could be physically and mentally examined, their physical disabilities treated, and where they could be classified and studied and assigned to the prison and labor for which they were best fitted. Sing Sing Prison was selected as the most available.

Extensive construction and equipment were necessary to carry out the plan. Buildings specially designed for a classification prison or clearing house were erected on the hill site. These buildings were described more in detail in the inspection report of last year. They consist of a large clinical building with a small outside cell house attached, a large outside cell house, a mess hall and kitchen, and a power house.

The clinical building is four stories high, built of red brick. The first floor will contain the administration offices, the examination and testing rooms and the offices for the psychiatrist, psychologist and doctor and their assistants.

The second floor is designed for psychiatric work. It is divided into rooms for mental tests, clinics, laboratories, observation and detention wards, and a large lecture hall for the instruction of attendants. The floors of many of the rooms are cork, and special care was taken to make the facilities adequate in every respect.

The third floor is constructed for the medical work. It is a complete modern hospital containing general, isolation, convalescent and tuberculosis wards, and separate rooms.

The fourth floor is planned for surgical work. It is divided into operating rooms and wards and is modern and sanitary in every detail.

The basement, mostly above ground, houses the kitchen, refrigerators, laundry and other equipment for the operation of a hospital.

The small cell house is joined to the clinical building by a corridor. The building contains 83 outside cell rooms, each 5 ft. 8 in. by 10 ft. 8 in. and 9 ft. high, with a large outside barred window. It is three stories high. The rooms open on galleries around a central court covered by a skylight.

The large cell house is a four-story red brick building containing 283 cells. The cells are outside rooms opening onto a central corridor on each floor; they are of the same dimensions as the ones in the small cell house. Each room or cell in both cell houses is equipped with a sanitary toilet, lavatory, a small iron cot bed, table and chair.

The mess hall and kitchen is a two-story red brick building in the rear of the large cell house. It has a broad connecting corridor and three wings providing for three large dining rooms.

The first floor contains the bakery, refrigerating plant, refrigerators and scullery. The refrigerating plant can produce 8,000 pounds of ice a day. Eight large refrigerators furnish sufficient refrigeration space for all future needs.

The second floor has a dining room in each of the three wings. Each room is lighted by six large windows and is equipped to accomodate 400 prisoners. The floors are red tile.

Small white enamel steel tables are placed end to end. Four persons sit on white enamel steel stools fastened to the floor at each of the tables. The bright room and white tables are extremely attractive and sanitary.

The central corridor extends to the kitchen. Along the corridor is placed a steam serving table with aluminum and bright metal dishes. The service is cafeteria. The prisoners pass along the serving table and receive their food on trays which they carry into the dining room.

The kitchen is sanitary and modern. It is equipped with a gas range, aluminum cooking kettles, coffee and tea boilers, meat roaster, and all necessary facilities for a large institution.[12]

[12][From Report of Hon. Frank E. Wade, Commissioner of Prisons for New York State, September, 1924.]

APPENDIX B

MASSACHUSETTS STATUTES AFFECTING THE DETERMINATION OF THE MENTAL CONDITION OF PERSONS COMING BEFORE THE COURTS OF THE COMMONWEALTH

General Laws, Chapter 123

Section 99. In order to determine the mental condition of any person coming before any court of the commonwealth, the presiding judge may, in his discretion, request the department (of mental diseases) to assign a member of the medical staff of a state hospital to make such examinations as he may deem necessary. No fee shall be paid for such examination, but the examining physician may be reimbursed for his reasonable traveling expenses.

Section 100. If a person under complaint or indictment for any crime is, at the time appointed for trial or sentence, or at any time prior thereto, found by the court to be insane or in such mental condition that his commitment to an institution for the insane is necessary for his proper care or observation pending the determination of his insanity, the court may commit him to a state hospital or to the Bridgewater State Hospital under such limitations, subject to the provisions of section one hundred and five, as it may order. The court may in its discretion employ one or more experts in insanity, or other physicians qualified as provided in section fifty-three, to examine the defendant, and all reasonable expenses incurred shall be audited and paid as in the case of other court expenses. A copy of the complaint or indictment and of the medical certificates attested by the clerk shall be delivered with such person in accordance with section fifty-three. If reconveyed to jail or custody under section one hundred and five, he shall be held in accordance with the terms of the process by which he was originally committed or confined.

Section 100A. Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court or the trial justice, as the case may be, shall give notice to the department of mental diseases, and the department shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility. The department shall file a report of its investigation with the clerk of the court in which the trial is to be held, and the report shall be accessible to the court, the district attorney and to the attorney for the accused, and shall be admissible as evidence of the mental condition of the accused. In the event of failure by the clerk of a district court or the trial justice to give notice to the department as aforesaid, the same shall be given by the clerk of the superior court after entry of the case in said court. Upon giving the notice required by this section the clerk of a court or the trial judge shall

so certify on the papers. The physician making such examination shall, upon certification by the department, receive the same fees and traveling expenses as provided in section seventy-three for the examination of persons committed to institutions and such fees and expenses shall be paid in the same manner as provided in section seventy-four for the payment of commitment expenses.