

Journal of Criminal Law and Criminology

Volume 25

Issue 5 *January-February*

Article 8

Winter 1935

Current Notes

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>



Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Current Notes, 25 Am. Inst. Crim. L. & Criminology 788 (1934-1935)

This Note is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

CURRENT NOTES

NEWMAN F. BAKER [Ed.]

Northwestern University Law School
Chicago, Illinois

The Attorney-General's Conference on Crime—The Conference on Crime which was called by Attorney-General Homer S. Cummings to meet in Washington, D. C., from December 10 through December 13 brought together over six hundred representatives of national, state and local law enforcement agencies, bar associations, civic bodies, and educational and research institutions. The keynote addresses by President Roosevelt, Attorney-General Cummings, and former Secretary of State Henry L. Stimson emphasized the nature and complexity of the crime problem which the conference was called to consider and challenged it to produce something more than pious wishes. For eight morning, afternoon, or evening sessions the delegates listened to speeches on all phases of the problem of criminal law administration, and on the final day the conference adopted a series of resolutions drawn up and recommended by a committee appointed for that purpose. The titles and authors of the papers presented and the text of the resolutions adopted are set forth at the end of this discussion and only limitations of space prevent us from discussing each address in detail.

In view of the statutes enacted by the last Congress to broaden the criminal law activity of the Federal government and in view of the re-

cent spectacular gangster-hunting activities of the United States Department of Justice, it is natural that the problem of federal-state relations in law enforcement should be a major topic of discussion at the conference. The Attorney-General and his subordinates constantly emphasized throughout the discussion that the Federal government has no intention of depriving the states of their powers nor of assuming their responsibilities in law enforcement. Joseph B. Keenan, assistant attorney-general, presented a vigorous defense of the 1934 Federal criminal legislation. He assured the conference that this legislation was not merely desirable but necessary, constitutionally as well as practically, in that it involves activities which the states themselves can not possibly perform. He assured the states that no further legislation of this type is contemplated at present and he declared that the United States Department of Justice desires merely to assist state and local agencies to meet the responsibility for criminal law enforcement which still rests primarily with them.

Governor Ehringhaus of North Carolina discussed this matter of federal-state relations from the state angle: "Frankly, we would resist aggressively any solution of our problem from outside. We have no mood for dictatorship nor for ab-

sentee government, but we do understand and appreciate the importance of leadership and education in securing necessary changes. We believe that it is along these lines that the Federal government can make its next great contribution." He made it clear, however, that he would oppose any effort by the Federal government to take over from the states the positive responsibility for criminal law enforcement.

The papers of the following speakers were closely related to this general problem: William Stanley, assistant to the Attorney-General, who described the organization and work of the Federal Department of Justice; Commissioner H. J. Anslinger of the Federal Bureau of Narcotics who described the work of his bureau and called upon the states to give the cooperation without which his efforts could not succeed; J. Weston Allen, former attorney-general of Massachusetts, who discussed the need for firearms regulation and especially regulation by act of Congress; and Professor Thorsten Sellin of the University of Pennsylvania who described the utter absence in the United States of any system for the collection, analysis, and publication of criminal statistics and suggested how the states and the Federal government might cooperate to build such a system.

Gordon Dean, special attorney, Department of Justice, discussed the interstate compact as a device by which the states might cooperate, without the active intervention of the Federal government, to discharge more effectively their duties in criminal law administration. He listed four fields in which this mechanism might be used to this end: (1) apprehension of persons accused of crime who have fled from

one state to another; (2) return of witnesses who have fled across state lines to avoid testifying; (3) the establishment by two or more states of joint agencies of law enforcement; (4) supervision of persons in one state who have been granted probation or parole in another.

It seemed to be tacitly agreed by the membership of the Conference that the most pressing problems are those of police and prosecution—agencies which exist under the authority of state government. Since it was agreed also that state and local agencies are to continue to bear the paramount duty in law enforcement, it was especially appropriate for the conference to devote much attention to problems of organization and procedure in the discharge of the police and prosecution functions. Dr. Sheldon Glueck of Harvard Law School stressed the lack of centralized administrative responsibility in the pre-conviction phases of law enforcement. He compared the unified control over criminal investigation and criminal prosecution which is found in the United States Department of Justice with the lack of concentrated responsibility in local government where this one process of investigation and prosecution may be spread over five or six independent agencies. He asked for reorganization of the local law enforcement machinery and suggested the establishment of state ministries of justice to coordinate the work of all agencies within the state. Earl Warren, District Attorney of Alameda County, California, described the new California provision for a state department of justice and reviewed the experience of his community with voluntary efforts at cooperation among independent law enforcement agencies and citizen groups.

The other speakers on this aspect of the program ignored the relationship between police and prosecution which Dr. Glueck pointed out and restricted their discussions to either prosecution or police. Gilbert Bettman, former Attorney-General of Ohio, made a vigorous attack upon numerous recent proposals to centralize the control of criminal prosecution in a state department of justice, suggesting that such a policy is "(1) logically unnecessary; (2) historically unsound; (3) humanly impracticable; and (4) tends toward the creeping paralysis of bureaucracy and away from a virile democracy." George Z. Medalie, former United States District Attorney for the southern district of New York, clashed directly with Bettman's thesis and asked for just such centralization. Captain Donald Leonard of the Michigan state police and Bruce Smith of the Institute of Public Administration, New York, reviewed the experience of the United States with state police forces and urged the establishment of competent state police agencies to assume much of the responsibility for police work and to coordinate the work of those local agencies which are allowed to remain.

J. Edgar Hoover, director of the Federal Division of Investigation, analyzed the problems of detection and apprehension. He described the methods by which his own unit has achieved its recent successes, emphasized the necessity for adequate training of police officers, and made a strong plea for the elimination of politics and corruption from the appointment and control of police agencies. Chief of Police Andrew J. Kavanaugh of Fairport, New York, spoke on police tenure and personnel and recommended the establishment of a Federal "West

Point" for training police officers. Dr. Wilmer Souder, chief of the identification laboratory of the National Bureau of Standards, spoke on the importance of scientific methods of criminal investigation and recommended the establishment of state and regional crime detection laboratories throughout the United States.

As the significance of the subjects would inevitably require, the conference devoted much time to discussion of the related problems of juvenile delinquency, crime prevention, and penal administration. Miss Katharine Lenroot, chief of the Children's Bureau of the United States Department of Labor and Judge Charles Charles W. Hoffman of the Cincinnati Domestic Relations Court urged the necessity for intelligent, sympathetic treatment of the juvenile delinquent or the potential delinquent after adequate analysis of his background by the juvenile court or other agency. Kenyon J. Scudder, Chief Probation Officer, Los Angeles County, California, described in detail the work and the success of the Los Angeles County Coordinating Council of agencies interested in the reduction of delinquency. Warden James A. Johnston of the United States penitentiary at Alcatraz, California, outlined the reasons why people are sent to prison, stated that the "protection of society" is the primary reason for the existence of prisons, and emphasized the necessity for firm discipline and some sort of occupation for those in prison. He continued, however, "Prisons have important work to perform. I want to see them bettered, improved, modernized, humanized. But when all is said and done, the finest prison we can build will stand as a monument to neglected youth." Judge

Joseph C. Hutcheson of the United States Circuit Court of Appeals, Houston, Texas, set forth the shameful condition of the local jail in the United States.

The necessity for probation and parole and the procedures necessary to make them effective components of a successful penal program were dealt with in papers by Sanford Bates, director of the United States bureau of prisons; A. C. Lindholm, President of the Minnesota State Board of Parole, and Joseph P. Murphy, Chief Probation Officer, Essex County, New Jersey.

John Landesco, member of the Illinois Board of Pardons and Paroles, described the organization of the criminal gang, the reasons why men are drawn into gangs and the resulting criminal career, and emphasized the importance of attacking the sociological factors which give rise to the criminal gang.

It is interesting to note that the subject of the procedure involved in the trial of a criminal case received comparatively little attention. The importance of criminal procedure and the possibility of improvement were not ignored by any means but the membership of the conference seemed to recognize tacitly that our major difficulties lie elsewhere—that with improvement in the structure and personnel of law enforcement agencies and in crime prevention and penal programs our present criminal procedure could be made to operate with a high degree of effectiveness. On this phase of criminal law administration, Ferdinand Pecora, member of the Federal Securities Commission, called attention especially to the difficulties which now arise from defects in the jury system as it now operates and from the constitutional immunity against self-incrimination. William

Draper Lewis described the work of the American Law Institute, of which he is director, and outlined the major features of the Institute's Model Code of Criminal Procedure.

The Program of the Attorney-General's Conference on Crime—The delegates to the conference registered Monday morning, December 10th, in the great hall of the new Department of Justice building. In the afternoon the members were welcomed by the Attorney-General and Mrs. Cummings at a reception in his suite of offices and tea was served in the library of the Department of Justice. The first session of the conference was called to order on Monday evening by former Secretary of War Patrick J. Hurley to hear the addresses given by Attorney-General Cummings, former Secretary of State Henry L. Stimson, and President Franklin D. Roosevelt.

Attorney-General Homer S. Cummings was elected permanent chairman of the conference, Dean Justin Miller of Duke University Law School, now assistant to the Attorney-General, was chosen permanent secretary, and the following persons were appointed by the chairman to serve on the Resolutions Committee: President Scott M. Loftin of the American Bar Association, chairman; United States Senator Henry F. Ashurst; Sanford Bates, director of the United States bureau of prisons; E. R. Cass, secretary of the American Prison Association; Dean Charles E. Clark of the Yale Law School; J. Edgar Hoover, director of the United States division of investigation; Joseph B. Keenan, assistant attorney-general, United States Department of Justice; Katharine Len-

root, chief of the children's bureau, United States Department of Labor; Justin Miller, dean of Duke University Law School and special assistant attorney-general; Will Shafroth, assistant to the president of the American Bar Association; Peter J. Siccardi, president of the International Association of Chiefs of Police; Representative Hatton W. Summers; and United States Senator Arthur H. Vandenburg.

The opening session was held in Constitution Hall. The remaining sessions met in Memorial Continental Hall. Both buildings are owned and maintained by the Daughters of the American Revolution. The following papers were presented to the Conference at the Tuesday, Wednesday, and Thursday sessions:

Tuesday morning, Clarence E. Martin, former president of the American Bar Association, presiding: *Detection and Apprehension* by J. Edgar Hoover, director of the division of investigation of the United States Department of Justice; *Modern Youth and Crime* by Judge Charles W. Hoffman of the Domestic Relations Court, Cincinnati, Ohio; *Commercial Racketeering* by Attorney-General John J. Bennett, Jr., of the State of New York; *The Place of Proper Police and Prosecution in a Crime Reduction Program* by Dr. Sheldon Gleuck, Professor of Criminology in the Harvard University School of Law; *Interstate Compacts for Crime Control* by Gordon Dean, special attorney, United States Department of Justice.

Tuesday afternoon, Grove Patterson, editor of the Toledo, Ohio, Blade and president of the American Society of Newspaper Editors, presiding: *Why Print Crime News?* by Paul Bellamy, editor of the

Cleveland, Ohio, Plain Dealer; *The Newspaper and Crime* by Stanley Walker, city editor of the New York Herald-Tribune; *The Opportunities of the Press in the War Against Crime* by Fulton Oursler, editor of Liberty Magazine; *The Role of Radio in an Anti-Crime Movement* by H. V. Kaltenborn, radio editor and news commentator; *The Screen's Contribution to the Prevention of Crime* by Carl E. Milliken, secretary of the Motion Picture Producers and Distributors of America, Inc.

Tuesday evening, Dean Charles E. Clark of Yale Law School presided in place of Dr. Raymond Moley, who was prevented by illness from being present: *Does Conviction Mean Punishment?* by Joseph P. Murphy, chief probation officer, Essex County, New Jersey; *Are the Criminal Courts Doing Their Duty?* by Ferdinand Pecora, member of the Federal Securities Commission; *Centralization of State Prosecuting Agencies* by Gilbert Bettman, former attorney-general of the State of Ohio; *Judicial versus Administrative Process at the Prosecution Stage* by Dr. William A. White, superintendent of St. Elizabeth's Hospital, Washington, D. C.; *Effective Prosecution—A Method of Crime Prevention* by George Z. Medalie, former United States District Attorney for the Southern District of New York.

Wednesday morning, Scott M. Loftin, president of the American Bar Association, presiding: *The Function of the Modern Prison* by Warden James A. Johnston of the United States Penitentiary at Alcatraz, California; *Crime, the Community, and the Lawyer* by Earle Evans, former president of the American Bar Association; *The Local Jail* by Judge Joseph C.

Hutcheson of the United States Circuit Court of Appeals, Houston, Texas; *Scientific Crime Detection* by Dr. Wilmer Souder, chief of the identification laboratory of the bureau of standards; United States Department of Commerce.

Wednesday afternoon, Peter J. Siccardi, president of the International Association of Chiefs of Police, presiding: *Firearms* by J. Weston Allen, former attorney-general of the State of Massachusetts; *Parole from the Prosecutor's Standpoint* by A. C. Lindholm, president of the Minnesota State Board of Parole and former prosecutor of Hennepin County, Minnesota; *The State's Crime Problem* by Governor J. C. B. Ehringhaus of North Carolina; *A Protective Penal Policy* by Sanford Bates, director of the bureau of prisons, United States Department of Justice.

Wednesday evening, United States Senator Henry F. Ashurst presiding: *How the Department of Justice Functions* by William Stanley, the assistant to the Attorney-General, United States Department of Justice; *The Lawyer's Part in Improving Criminal Law Enforcement* by Will Shafroth, assistant to the president of the American Bar Association; *Organizing the Community to Combat Crime* by District Attorney Earl Warren of Alameda County, California; *Coordination of Police Units* by Bruce Smith of the Institute of Public Administration, New York City; *The Federal Government and the Crime Problem* by Assistant Attorney-General Joseph D. Keenan of the United States Department of Justice.

Thursday morning, Representative Hatton Sumners, chairman of the judiciary committee of the United States House of Representatives, presiding: *Importance of*

Criminal Statistics by Professor Thorsten Sellin of the University of Pennsylvania; *The Narcotic Problem* by Commissioner H. T. Anslinger of the bureau of narcotics, United States Treasury Department; *Restating Criminal Law and Improving Criminal Procedure* by William Draper Lewis, director of the American Law Institute; *State Legislation in the Field of Criminal Law Administration* by Henry Toll, director of the American Legislators' Association; *The State Police* by Captain Donald Leonard of the Michigan state police.

Thursday afternoon, Mrs. Grace Morrison Poole, president of the General Federation of Women's Clubs, presiding: *Social Aspects of Crime Prevention* by Kenyon J. Scudder, chief probation officer, Los Angeles County, California; *The Story of the Gang* by John Landesco, member of the Illinois Board of Pardons and Paroles; *Police Tenure and Police Personnel* by Andrew J. Kavanaugh, chief of police of Fairport, N. Y.; *Old and New Methods of Dealing with Vagrants and Delinquents* by Miss Katharine Lenroot, chief of the children's bureau of the United States Department of Labor.

The report of the Resolutions Committee was presented to the Conference by the chairman, Mr. Scott M. Loftin, at the Thursday afternoon session and was approved by the delegates with no discussion whatever and with almost no dissent. The text of this report is given elsewhere in this account of the conference.

At the Thursday evening session, which was the last, the lessons of the Conference were summarized by the Attorney-General and the closing address was given by Bishop Francis J. McConnell of the Meth-

odist Episcopal Church. After the adjournment of the Conference on Thursday evening the delegates attended a reception given by the Attorney-General and Mrs. Cummings at the Pan-American Union Building.

Crime Conference Resolutions—

The following material is the text of the report which was presented to the Attorney-General's Conference on Crime by the Resolutions Committee and which was overwhelmingly endorsed by the members of the Conference:

For the first time there has been convened at the capitol of the Nation, under the sponsorship of the Attorney-General of the United States, a Conference on Crime in which representatives of the Federal, State, territorial and local governments have participated, as well as of more than 75 organizations the interests and activities of which bear upon this problem. Its meetings have been devoted to the scientific study and practical fulfillment of the first duty of government—which is to protect the lives and property of its citizens. There has been presented at this Conference overwhelming evidence of an intolerable breakdown of law and order throughout the country. It is inconceivable that this Nation can continue to permit murders, pillaging and racketeering with impunity.

Now, finishing its deliberations after four days of discussion, and in the sincere belief that no practical program of crime amelioration can be effectively initiated without the vitally sustaining force of public opinion, the Attorney - General's Conference on Crime brings its conclusions to the attention of the American people and solicits from

them in their home communities, as well as in the wider political jurisdictions, their active and aggressive support for the following resolutions:

I

That the Conference records its satisfaction at the substantial achievements of the Conference in informing and stimulating the forces of law enforcement in their difficult but vital tasks and even more in the promise it gives of earnest and persistent study and effort for the future. It therefore expresses its appreciation of the constructive leadership of the Attorney-General, shown in the conception, the organization and the successful execution of the plan for this meeting; and its further appreciation of the disinterested service of the more than 600 delegates, and the large number of visitors, who at great personal sacrifice of time and money, have exhibited a fine spirit of public obligation by their attendance here; and, further recommends that this Conference be developed into a continuing organization, with meetings biennially or oftener in Washington, on the call of the Attorney-General.

II

That the Conference on Crime, endorsing the recommendation of the Attorney-General, urges that a national scientific and educational center be established in Washington, D. C., for the better training of carefully selected personnel in the broad field of criminal law administration and the treatment of crime and criminals. It further recommends that an advisory committee be appointed by the Attorney-General to consider and report to him

ways and means of accomplishing the purpose of this resolution.

III

That one of the outstanding benefits of this Conference has been an increased mutual understanding of our common problems by all groups. Effective cooperation by all departments and agencies of Federal, State, county and local authorities is essential to the accomplishment of our great objective. No encroachment upon State authority is intended. On the other hand, the Conference urges the strengthening of State resources. Especially in view of the deplorable condition of disorganization which exists in local law enforcement units, it is recommended that the various States give serious consideration to a better form of coordinated control by means of a State department of justice or otherwise. Modern conditions demand modern methods. The Federal government should stand ready within the limits of Federal law to offer aid and support as and when needed. In many such instances, local, county and State activities can thus be effectively assisted.

The recently authorized State Compact Plan should help the States themselves in the achievement of more effective cooperation.

The major portion of the task of crime repression should still remain with local authorities whose devotion to the cause of law enforcement has been so amply demonstrated by their enthusiastic participation in this Conference and their whole-hearted willingness to join with others in the solution of its problems, as well as by increasing evidences of success in meeting the challenge of crime in their own communities.

IV

That the Conference recognizes that criminal careers usually originate in the early years of neglected childhood and that the most fundamental and hopeful measures of crime prevention are those directed toward discovering the underlying factors in the delinquency of children and strengthening and coordinating the resources of the home, the school, and the community for child training and child guidance. It commends the progress that has been made in certain States and localities in drawing together through such agencies as coordinating councils all available local forces to combat unwholesome influences upon youth. It urges State and National leadership through appropriate governmental and voluntary organizations, in fostering the development of those coordinating agencies, the provision of constructive educational, vocational and recreational opportunities for youth, and the provision of competent, skilled service to children in need of guidance and correction.

V

That the Conference condemns the use of methods of dealing with industrial conflicts and racial antagonisms which are not in accord with orderly and lawful procedures, and urges the administration of all phases of public safety by legally constituted law enforcement agencies only.

VI

That the Conference deplores the abuse of the parole and the pardon power as tending to undermine respect for law and order. Parole when courageously and intelligently applied is an integral and necessary

part of a protective penal system.

The Conference recommends the continued use of parole as the safest method of release from prison, but under the following minimum conditions:

1. The minimum and maximum of indeterminate sentences should be compatible with adequate punishment, rehabilitation and public welfare and protection.

2. Paroles should be granted only by a full time salaried Board of duly qualified persons.

3. Full information should be available and sought for the use of the Board as to the prisoners' records, habits, environment, family and prospects.

4. The names of all persons endorsing a prisoner for parole should be made public on request of the press or any responsible person or organization.

5. No parole should be granted except where adequate employment and rigid supervision are provided.

6. Adequate appropriations must be provided for obtaining requisite data and furnishing necessary supervision.

7. One parole officer should not be expected to supervise more than a number to whom he can give adequate attention.

8. No political or other improper influence shall be tolerated.

9. Machinery should be provided for the prompt revocation of any parole when continuance at liberty is not in the public interest.

VII

That the Attorney-General's Conference on Crime believes that the time is ripe for securing a substantial improvement in criminal procedure, and it therefore recommends to all legislatures which are meeting in 1935, a careful consideration of

procedural recommendations, and particularly of the model Code of Criminal Procedure prepared by the American Law Institute and approved by the American Bar Association and the Association of American Law Schools.

Specifically, it recommends the following provisions:

1. Giving the accused the privilege of electing whether he shall be tried by jury or the court alone.

2. Permitting the impaneling of alternate or extra jurors to serve in the case of the disability or disqualification of any juror during trial.

3. Permitting trial upon information as well as indictment. Where indictment by grand jury remains a constitutional requirement, waiver should be allowed.

4. Providing for jury verdicts in criminal cases by less than a unanimous vote except in the case of certain major felonies.

5. Adopting a principle that a criminal defendant offering a claim of alibi or insanity in his defense shall be required to give advance notice to the prosecution of this fact and of the circumstances to be offered, and that in the absence of such notice, a plea of insanity or a defense based on an alibi shall not be permitted upon trial except in extraordinary cases in the discretion of the judge.

6. Adopting a rule permitting court and counsel to comment to the jury on the failure of the defendant in a criminal case to testify in his own behalf.

And it further recommends that committees on criminal law and its enforcement be appointed in every legislature for the consideration of these and other measures designed to improve criminal justice and that the American Legislators' Association cooperate with these committees.

VIII

That the Conference deplores the practice of unduly dramatizing stories of crime and glorifying the criminal. It commends the activities of those newspapers and periodicals which have rendered substantial aid in the identification of wanted criminals and have otherwise aided in supporting the law enforcing authorities.

IX

That the Conference specifically condemns (1) the unsafe, unsanitary and insecure conditions which exist in many local jails throughout the country; (2) the possession of firearms by irresponsible persons and known criminals; (3) the activities of lawyer criminals; (4) the protection which is too often given to professional criminals and racketeers by persons in professional, business, political and official positions; (5) the generally prevalent abuse of bail; and (6) similar generally recognized evils in criminal law administration; and recommends the reference of the same to the permanent organization which may be set up to perpetuate the work of this Conference for the purpose of studying and recommending remedial action relating thereto.

The 110 resolutions received by the Conference contain some further valuable suggestions for improvement. We recommend that all of these be given careful study by the permanent organization referred to above.

California Constitutional Changes—
At the general election on November 6, 1934, several proposed constitutional amendments of interest were ratified by the people of the state of

California. Official summaries of proposals 4, 5, and 6 are reprinted:

4. ATTORNEY GENERAL. *Initiative Constitutional Amendment*. Declares Attorney-General, State's chief law officer, shall see all State laws enforced, directly supervise district attorneys, sheriffs and other enforcement officers designated by law, and require from them written reports concerning criminal matters. Empowers him to prosecute, with district attorney's powers, violations within superior court's jurisdiction; assist district attorneys when public interest or Governor requires, and perform other duties prescribed by law; Governor and Controller allowing his necessary expenses from general fund. Makes his salary same as Supreme Court Associate Justice, prohibiting him from private practice, and requiring his entire time in State service.

5. PERMITTING COMMENT ON EVIDENCE AND FAILURE OF DEFENDANT TO TESTIFY IN CRIMINAL CASES. Amends Section 13 of Article I, and Section 19 of Article VI, of Constitution. Declares in any criminal case, whether defendant testifies or not, court and counsel may comment on his failure to explain or deny any evidence against him. Declares court may instruct jury regarding law applicable to facts of case, and comment on evidence, testimony and credibility of any witness. Requires court inform jury in all cases that jurors are exclusive judges of all questions of fact submitted to them and of credibility of witnesses.

6. PLEADING GUILTY BEFORE COMMITTING MAGISTRATE. *Initiative Constitutional Amendment*. Requires defendant, charged with felony, be immediately taken before magistrate of court where sworn complaint was filed, who shall deliver him copy

thereof and allow him time to procure counsel; if such felony is not punishable with death, magistrate and district attorney consenting thereto and defendant's counsel being present, defendant may plead guilty to offense charged or any offense included therein; thereupon magistrate shall commit defendant to sheriff and certify the case to superior court where proceedings shall be had as if defendant had pleaded guilty in such court.

Education in Penal Institutions—Mr. E. R. Cass, General Secretary of the Prison Association of New York, has sent in the preliminary report of the Governor's [N. Y.] Commission for the Study of Educational Problems of Penal Institutions for Youth. The report was submitted by Professor N. L. Engelhardt of Teachers College, Columbia University, who was selected as Chairman of the Commission. The Prison Association of New York has begun its effort before the State Budget Director to obtain funds necessary to carry out the proposals of the Commission. Lack of space prevents the printing of the entire report and, since copies may be obtained from the Commission at 525 West 120th Street, New York City, we include here only the proposed legislation to effect the recommended changes:

"1—An amendment to Article II of the Correction Law, to provide for a new section (15-a) to be known as the Division of Education.

15-a. *Division of Education.* There shall be in the Department of Correction a Division of Education. The head of such Division shall be the present Director of Vocational Education and here-

inafter future appointments shall be made by the Commissioner of Correction. The head of such Division shall be a person whose education, training, and experience shall cover fields of penology and of professional education. The educational qualifications shall include the satisfactory completion of three years of graduate work in education, penology, and allied fields. The head of the Division of Education shall have supervision of all educational work in the Department of Correction and shall have full authority to visit and inspect all institutions of the Department to observe, study, organize, and develop the educational activities of such institutions in harmony with the general educational program of the Department. He shall be responsible to the Commissioner and Deputy Commissioner of Correction.

2—Article II, Section 7, should be amended by adding thereto a new section, No. 5, to be known as the Division of Education.

3—Section 136 of Article VI, *Prison Instruction*, should be re-entitled to read: '*Prison Education*' and should be rewritten to read as follows:

The objective of prison education in its broadest sense should be the socialization through varied impressional and expressional activities, with emphasis on individual inmate needs. The objective of this program should be that these inmates may be returned to society with a more wholesome attitude toward living, with a desire to conduct themselves as good citizens, and with the skills and knowledges which will give them a reasonable chance to maintain themselves and their dependents

through honest labor. To this end each prisoner shall be given a program of education which, on the basis of available data, seems most likely to further the process of socialization and rehabilitation. The time daily devoted to such education shall be such as is required for meeting the above objectives. The Director of Education, in cooperation with the State Commissioner of Education and the Commissioner of Correction, shall develop the curricula and the educational programs that are required to meet the special needs of each institution in the state. The State Commissioner of Education, in cooperation with the Commissioner of Correction and the Director of Education, shall set up the educational requirements for the certification of teachers in all state prisons and reformatories. Such educational requirements shall be sufficiently broad and comprehensive to include training in penology, sociology, psychology, philosophy, in the special subjects to be taught, and in any other professional courses as may be deemed necessary by the responsible officers. No certificates for teaching service in the state institutions will be issued unless a minimum of four years of training beyond the high school has been secured, or an acceptable equivalent."

Association of American Law Schools Report—At the meeting of the Association of American Law Schools, held in Chicago, December 27, 28, and 29, 1934, the Committee on survey of Crime, Criminal Law and Criminal Procedure made the following report:

The movement for a better co-

ordination of the aims and activities of the Bar of the country is one which should be of particular interest to those engaged in the teaching branch of the profession. This movement had its inception in the National Bar Program, proposed by the American Bar Association and adopted at a conference of state and local bar association officers in Grand Rapids on August 29, 1933. The purpose of this project was to focus the attention of lawyers in all parts of the country on a few important subjects at a time; and the subjects selected for the initiation of this plan, *in the order of their choice*, are as follows:

1. Criminal Law and Its Enforcement.
2. Legal Education and Admissions to the Bar,
3. Unauthorized Practice of Law,
4. Selection of Judges.

The first of these topics (and no doubt the same is true of each of the others) is so broad that the desired concentration of effort required further limitation. In order to ascertain the views of lawyers generally, as to the best points of approach to this vast field, a questionnaire was sent to each of the twelve hundred and fifty state and local bar associations. The foreword to this questionnaire contained this significant paragraph:

"The subject of criminal law and its enforcement is so wide in its scope and so vast in its many aspects that no results may be looked for until intelligent leaders of the bar have sensed the full situation and assumed responsibility for changing it. A bibliography on the subject by A. F. Kuhlman, containing only references to books and articles and literature on this subject, con-

tains over six hundred pages. While lawyers are and must be interested in all its phases, they are particularly concerned and able to secure immediate results with those portions of the field dealing with the apprehension of the criminal, his arrest and prosecution. Reform of the substantive criminal law, crime prevention in its broader aspects, punishment, institutional treatment of offenders in prisons, jails and reformatories, non-institutional handling of criminals by parole or probation, the juvenile court, the use of the pardoning power, selection of judges and prosecutors, the causes of crime and a great many other factors in the general situation, while of tremendous importance, have been excluded from the immediate program because of the necessity for limiting the targets to be shot at to a comparatively few within a fairly narrow range."

The questionnaire itself, after calling for specific items of information relative to each of the following subjects, concluded as follows:

"Please indicate which of these major problems is most important in your community, in the opinion of your committee, which is the second in importance and which is the third in importance:

1. Relation Between Politics and Crime.
2. Prosecutor.
3. Police.
4. Lawyer Criminal.
5. Racketeering.
6. Kidnapping.
7. Criminal Procedure.
8. Federal v. Local Administration of Criminal Justice.
9. Arousing the Bar.
10. Other Problems."

Proper cooperation on the part of the Association seemed to require the sending of this questionnaire to teachers of criminal law, criminal procedure and criminal law administration in the member schools. As a matter of fact, a number of these teachers served on committees appointed by state and local bar associations for the purpose of studying these questions and submitting answers to the national headquarters. But the purpose of having these problems brought to the attention of lawyers in all parts of the country and in all branches of the profession made it important that no teacher in this field in Association schools should fail to have this questionnaire brought to his attention. And although some of these teachers thought those engaged in the practice were better qualified to say where the point of approach should be, the committee decided to ascertain the views of the teachers in this field and recommend that this information be submitted to the American Bar Association as evidence of our interest in the National Bar Program and our desire to cooperate in the undertaking.

Fifty-six answers were received. A few mentioned only first choice, or first and second, but most of them listed three subjects in the order of preference. Kidnapping and Racketeering received but two and four votes, respectively, the explanation being offered in many replies that these subjects are very important but are not matters on which the lawyer group is in a position to make outstanding contribution. The topics receiving the largest number of votes were: prosecutor (34), police (27) and relation between politics and crime (24). From this it will be seen that more than half of the replies listed "pros-

ecutor" as one of the first three subjects to be considered.

Not all of those who answered the questions submitted reasons for their conclusions. Explanations for the inclusion of "prosecutor" in the list ranged from the complaint that he is "an inefficient and politics ridden official," to the following:

"Discussions of the prosecutor are usually limited to the question of whether he is, or is not, an efficient trial lawyer. The problem is much larger than this. Evidence of an effort to limit the powers of the prosecutor is not lacking. For example, in some states the *nolle prosequi* has been abolished by a statutory provision that no prosecution shall be discontinued or abandoned except by order of the court. In most instances, however, the busy judge relies entirely upon the prosecuting officer in this respect, so that the practical result is changed little, if any, by such legislation. On the other hand, the actual operation of the prosecutor's office seems to be placing there an increasing burden of responsibilities. In the determination of what prosecutions shall be brought, of what the charges shall be in particular cases, of whether prosecutions shall be dismissed or continued, of whether pleas of guilty to lesser offenses shall or shall

not be accepted, of whether recommendations for probation or parole shall be submitted or withheld, the prosecuting attorney in many communities is actually exercising the fact-finding function of the jury, the judicial discretion of the judge, and something bordering on the pardoning power of the chief executive. He may perhaps be exercising these powers very harmfully, such as by doing nothing in situations in which vigorous prosecution is needed, or by accepting pleas of guilty to a lesser offense for no reason other than to spare himself the effort of conducting a trial for the more serious crime, or of failing to recommend probation in cases in which this disposition would be proper. And if this does happen in the office of a particular prosecutor it may be for the reason that the officer is lazy, or because it is humanly impossible for him with his training and his staff to perform all of the work which an adequate acceptance of all of the responsibilities thrust upon him would entail. If every prosecutor were an efficient trial lawyer, a study of the problems here involved would still be a matter of first importance."

The answers received rated the topics as follows:

<i>Topic</i>	<i>First Choice</i>	<i>Second Choice</i>	<i>Third Choice</i>	<i>Total</i>
Relation Between Politics and Crime	13	6	5	24
Prosecutor	13	13	8	34
Police	8	11	8	27
Lawyer Criminal	1	6	3	10
Racketeering	0	0	4	4
Kidnapping	0	1	1	2
Criminal Procedure	8	8	8	24
Federal v. Local Administration of Criminal Justice	2	2	3	4
Arousing the Bar	5	3	5	13
Other Problems	6	1	3	10

Under "Other Problems" the following were mentioned: restatement of substantive criminal law; correctional treatment; apprehension of accused and securing witnesses by interstate legislation; juvenile court; prisons and prison punishment; crime prevention in its broader aspects; necessity for centralized administration of criminal justice for larger areas; attitude of the public toward crime; improving the administrative structure of criminal courts handling petty offenses; creation of a central department of investigation by the state (for serious crimes). . . .

Respectfully submitted,

PAUL E. BRYAN, CHARLES K. BURDICK, ALEXANDER M. KIDD, ERNST W. PUTTKAMMER, GEORGE W. STUMBERG, CHESTER G. VERNIER, SAM B. WARNER, ROLLIN M. PERKINS, *Chairman*.

A. A. L. S. Crimes Section—The Round Table on Crimes of the Association of American Law Schools met on Friday, December 28, in Chicago. Professor J. J. Robinson of Indiana University served as chairman. Among the speakers were Professor Alfred L. Gausewitz of the University of Wisconsin who spoke on the "Wisconsin Criminal Law Survey" discussed in this issue of "Current Notes" *infra*; Professor Mason Ladd of the University of Iowa (Thayer Teaching Fellow, Harvard Law School, 1934-35) who discussed "Necessary Changes in the Law of Evidence to Meet Modern Criminal Problems." Professor Ladd's topics were limited to (1) notice of alibi; (2) comment on defendant's failure to testify; (3) impeachment of one's own witnesses and were amplified by Professor

Edmund M. Morgan of Harvard Law School. Professor Ernst Puttkammer of the University of Chicago was the concluding speaker and he presented a proposed statute for state police systems, with comments upon each section. This statute is being prepared for the Committee on Uniform Crime Records of the International Association of Chiefs of Police. Professor Sheldon Glueck of Harvard Law School is chairman of the council for 1935 and will plan the program.

Several members of the section in attendance gave addresses at the meeting of the Illinois State's Attorneys Association which was meeting in Chicago at the same time. These speakers were Professor Ernst Puttkammer of Chicago, Professor John H. Wigmore of Northwestern, Dean Justin Miller of Duke, President Eugene A. Gilmore of Iowa, Dean Roscoe Pound of Harvard, Professor Leonarde Keeler of Northwestern, Dean A. J. Harno of Illinois and Professor N. F. Baker of Northwestern.

Wisconsin Criminal Code Study—With the assistance of several F. E. R. A. workers, Professor Alfred L. Gausewitz and a committee of the Wisconsin Bar Association have been working upon a revision of the Criminal Code of Wisconsin. In an address before the crimes section of the Association of American Law Schools Professor Gausewitz declared that the suggestions for Wisconsin are to be made on the principle of *complete individualization of treatment* through a wholly indeterminate sentence. Carried to its logical conclusion the complete individualization of treatment would mean that no treatment or penalties would be prescribed in advance by

either the legislature or the court, but the sentence would be wholly indeterminate, that is, a judgment that the convicted person be committed to the custody and control of the state, or to some specified agency thereof, to be treated as his individual case demands, until found and declared to be fit to be discharged.

Such a sentence was seriously considered in Wisconsin as long as twenty-five years ago, when a committee of the Wisconsin Branch of the American Institute of Criminal Law and Criminology discussed the question, "Should the function of the courts be limited to the determination of the guilt or innocence of the accused?" Professor Gausewitz believes that the indeterminate sentence has now been accepted in principle, and that political conditions and traditions of administration in Wisconsin are such that the fear that no administrative board could be constituted that would be able to administer it competently and without corruption, which fear has been the chief reason for the failure to approve it elsewhere, need not exist in Wisconsin.

Among other changes in the criminal law that are contemplated in the suggested revision are the abolishment of the degrees of crimes with consequent simplification of the penal code, the information and proof. In Wisconsin there are now three degrees of murder and four degrees of manslaughter, as well as two or three special types of homicide; three or four types of arson; six of burglary; thirteen or fourteen types of trespass or malicious destruction of property; two types of robbery; about nine kinds of larceny; some eleven types of embezzlement; the usual false pretense and allied definitions; and some twelve special types of as-

saults and attempts. Almost all of these are with different penalties, and so far as the different degrees or types are based on a desire to fix different penalties, they could be consolidated. Attempts would be treated no differently from the completed crime. The principal and accessory distinction could be more completely eradicated than it has been.

It is expected that for a time it would be necessary to continue a legislative classification of crimes, probably the old classification of felony, misdemeanor, and civil offenses, with power in the courts to sentence some types of misdemeanants to the custody of the treatment agency, but with only felons required to be so committed, with a possible power in the court to suspend execution of the sentence even in the case of felons. If all offenders were to be committed to the treatment agencies as presently equipped, they would be swamped.

In his address Professor Gausewitz referred to Professor Sheldon Glueck's article, "The Principles of a Rational Penal Code," 41 Harv. Law Rev. 453 (1928), and to studies by Professor John MacDonald and Robert Cushman appended to the 1934 Report of the New York Commission on the Administration of Justice. He declared that the individualization of treatment did not require an abandonment of the deterrent theory of punishment—indeed, it might be a greater deterrent—and that the greatest benefit that could be hoped for from it would be a changed attitude by both official and unofficial persons toward the administration of justice as they learned to have confidence in the integrity and wisdom of the treatment agency, when compared with the *de facto* discretionary powers of

witnesses, police, prosecutors, judges and jurors.

State Police Study—The Research Department of the Kansas Legislative Council, F. H. Guild, Director, and Camden Strain, Assistant Director, recently prepared an eighty-page study (mimeographed) of state police systems. Appended thereto is a bibliography on state police. The subjects discussed are: Origin and development of state police systems; General authority of state police; Relation to other police agencies; General operation of state police; Efficiency of state police; Organization of departments; Administration of departments; Application of the state police idea to Kansas. Most interesting are the organization charts showing the governmental set-up of the Pennsylvania, New York, New Jersey, Oregon, Texas, Connecticut, and Michigan systems.

Those interested in state police should examine the article, "A Modern State Police System," by Lynn G. Adams, Superintendent of the Pennsylvania State Police, Harrisburg, Pa. This article appeared in "Police 13-13" p. 3 (Nov., 1934).

California Parole Reform — On July 6, 1934, at Los Angeles four hundred interested citizens met and discussed the parole laws of California. This group authorized the appointment of a Central Committee for parole reform which reported in December, 1934. The committee advocated drastic changes and we include only one group of recommendations—Creation of an Adequate Parole Authority.

First: That the present Board of Prison Terms and Paroles, and its present function as an isolated

parole authority, be abolished;

Second: That complete parole authority with reference to male prisoners confined in state prisons be exercised by a new central authority, vested with power to administer the entire state prison penological system, insofar as it affects male felons and female offenders sentenced to the death penalty;

Third: That this new central authority be designated as the "Prison and Parole Commission, State of California," and that its members be known as "Prison and Parole Commissioners";

Fourth: That it be composed of three (3) members, appointed by the Governor for a normal term of nine (9) years—the original members serving for three, six and nine years, respectively, in order to preserve continuity in administration;

Fifth: That each of its members be appointed from a list of not less than two nor more than three nominees, selected by a nominating board of nine persons, composed as follows: the Chief Justice of the State of California, the President of the University of California, and the President of the State Bar of California, together with six other citizens of the State selected by the three officers named—one of these six citizens to be a person representative of Labor, one to be a person representative of Business, one to be an Agriculturalist, one to be a woman, and two at large;

Sixth: That its members be subject to removal only for cause, by impeachment proceedings before the state Senate, in the manner now provided with respect to certain judicial and other state officers;

Seventh: That the members, during their respective terms of office, be required to devote their entire time and attention to their duties,

and be forbidden to hold other public office, or to carry on any other business or profession whatsoever; and, further, that each member be forbidden to hold office in any political organization, or to take part in any political campaign;

Eighth: That specific legal provision be made that no partisan politics or sectarian considerations shall enter into the nomination, selection or appointment of members of the Commission, or into its administration of the penological affairs of the State—particularly in its administration of the parole authority granted to it;

Ninth: That the Commission be given power to choose its own President, and to employ the Chiefs of the various subordinate Divisions and Bureaus hereinafter referred to, created to administer the different departments of its work, and to fix the salaries of such Chiefs;

Tenth: That the compensation of the Commissioners be the same as the compensation of judges of the Superior Court in Los Angeles County or in the City and County of San Francisco, as fixed from time to time by the state Legislature, and that they be reimbursed for necessary travelling and other expenses.

Miscellaneous—Writing for the December, 1934, issue of *Probation*, Mr. Walter M. Germain says: (p. 19) "I heartily subscribe to *swift* and *certain* punishment for habitual offenders, but punishment to be effective must also be *just*. Vindictiveness on the part of organized society is likely to make the first offender an habitual criminal. This is exactly what happened in the case of Dillinger. His associate in the crime which sent him to prison for

the first time had served a prison sentence, but the associate received a mild indeterminate sentence, while Dillinger was given a flat ten-year sentence. There is no question whatever that this obvious injustice had much to do with the bitterness which Dillinger developed and which made him for a while the Number One Public Enemy."

The Seventh Edition of the Probation Officers' Directory, just issued, lists the probation officers by cities and covers every state in the Union and the Provinces of Canada, together with information on inquiries in foreign countries. This Directory fills a need which is not met by any other publication. Not only is it the only national list of probation officers, but, for the majority of states, it furnishes the only complete state list. It may be purchased from the National Probation Association, 50 West 50th St., New York City, for one dollar.

Mr. Joseph Ordenstein, secretary of the Territorial Board of Prison Directors, Honolulu, has brought to our attention an article in the Honolulu Star-Bulletin (Nov. 17, 1934) dealing with the advanced prison methods employed in the Oahu prison, Charles Welsh, Warden.

The Division of Statistics and Research of the New Jersey State Department of Institutions and Agencies, William J. Ellis, Commissioner, has prepared a bibliography of 21 pages entitled "Publications Relating to Public Welfare Work in New Jersey." This State Department, as shown by the publications of its officers, has long

been one of the most progressive ones in this country.

The Proceedings of the Eighth Annual Conference of the New York State Association of Judges of Children's Courts held in 1930 was recently published by the New York State Department of Correction, Division of Probation. The printing was done by the class in printing, House of Refuge, Randall's Island, New York City.

That police are handicapped in their efforts to combat crime because the police chiefs of many cities lack the authority to build up a department which can enforce the law satisfactorily and because they frequently lack the power to use a strong department effectively when it exists, is the conclusion of Chief of Police R. W. Morris of Geneva in a report prepared for the New York State Conference of Mayors.

Chief Morris made a survey of 300 cities and found that in not one was the police chief fully independent in giving orders. In 54 cities the chief is under dual control; in five there is a triple control and in one a quadruple control. In only 137 is the chief protected by civil service and in 156 there are no civil service departments. In only 35 cities does the chief have unlimited power in appointing policemen, and in only a few can he dismiss a man or even impose a penalty without the authority of some superior officer. (From "Correction," Nov., 1934.)

A most interesting study of women in the county jails of Pennsylvania, entitled "A Forgotten Four-Hundred," by Florence L. Sanville, was recently published as the regular quarterly issue of the Prison

Journal of the Pennsylvania Prison Society.

In November, 1934, Col. Henry Barrett Chamberlain, Operating Director of the Chicago Crime Commission, was asked by Governor Henry Horner of Illinois to undertake a study with recommendations for the improvement of the Illinois parole system. His report was recently completed and should result in considerable improvement of the Illinois system.

In 1931 the trustees of the Bureau of Social Hygiene brought to this country Alexander Paterson, M. C., Commissioner of Prisons for England and Wales. He spent four months in this country visiting 90 penal institutions, his tour being planned by the American Prison Association and the Federal Bureau of Prisons. The American Prison Association recently sent to us his "The Prison Problem of America (With Admiration for Those Who Face It)," printed at H. M. Prison, Maidstone, for private circulation. He concludes with a few wise suggestions concerning overcrowding, administration, personnel, employment, security, discharge, education, reformatory schools and prison buildings.

In a letter from Dr. Wm. C. Woodward, Director of the Bureau of Legal Medicine and Legislation of the American Medical Association, he pointed out the fact that two cases may be cited in which appellate courts have passed on the validity of blood tests in paternity cases. These are *State v. Damm*, 252 N. W. 7, decided by the Supreme Court of South Dakota, December 29, 1933; *Beuschell v. Manowitz*, 272 N. Y. S. 165, decided by

the Supreme Court of New York, Appellate Division, Second Department, May 25, 1934.

In the article by Drs. Hooker and Boyd, 25 J. Crim. L. p. 197 (July-Aug., 1934), it was stated that lawyers of the American Medical Association have been unable to find any records of such decisions.

It was interesting to note that at the Fortieth Annual Conference on Government of the National Municipal League, held in Pittsburgh late in November one of the seven Round Tables was headed "The Police Attack Crime." Donald C.

Stone of the Public Administration Service was chairman.

"Guide to the Literature on Penal Education." A guide with the above title has been prepared by D. Ross Pugmire and issued in twelve pages mimeo. A single copy will be sent upon receipt of the postage, nine cents, to any individual investigator, faculty member, or library, as long as the supply lasts. Address Carter Alexander, Library Professor, Teachers College, Columbia University, New York City, in whose course Mr. Pugmire worked out the guide.