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Current Notes

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CURRENT NOTES

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A. B. A. Meeting—The meetings of the Section of Criminal Law, American Bar Association, were held on August 25 and 26, 1936, at Boston, Mass. At the first meeting the reports of committees, *infra*, were received. A dinner with the Interstate Commission on Crime featured an address by Hon. Homer Cummings, Attorney General of the United States, who spoke on "The Attorney General's Survey of Release Procedures" followed by Professor Rollin H. Perkins of Iowa who is serving as one of the Survey regional directors. Professor Perkins' address was on the subject "How the Survey Is Being Carried on in the Field." At the meeting on the next day the main address was on "A Code of Criminal Law" by Dean Albert J. Harno of the College of Law, University of Illinois. A discussion of the fundamental principles which should underlie the preparation of a code of criminal law along lines which have been suggested by the American Law Institute, was conducted by Professor Sheldon Glueck of Harvard and Dr. William Draper Lewis of the American Law Institute.

Improvement of Personnel—Professor John Barker Waite of Michigan, again presented to the Section of Criminal Law, American

Bar Association, the Report of the Committee on Improvement of the Personnel in Criminal Law Enforcement, based upon the idea that "great betterment in the enforcement of criminal law cannot be secured by the easy method of amending the law itself, but must be sought through the more difficult process of improvement in the law's administrators." The specific recommendations were:

"1. That it is the opinion of this Association that material improvement in enforcement of the criminal law cannot be attained through alteration of the criminal law alone, but must be sought through improvement in the character and attitude of the administrators on whom Law's efficiency depends.

2. That this Association urges the people of the various states to establish a permanence of tenure for judges during good behavior, to the end that justice may be administered without thought of personal consequences and in the sole purpose of the public good.

3. That this Association recommends changes in court organization whereby

(a) the judges responsible for the reality and efficiency with which justice is administered shall be given control of the activity of court clerks, stenograph-

ers, bailiffs and other court officials;

(b) the judicial functions of law enforcement, including the issuance of warrants, preliminary hearing, trial and sentence, shall be treated as functions of a single, unified court, whose members are cooperating agencies under one centralized authority for each locality or district;

(c) all such unified courts of local jurisdiction shall become parts of a unified state system under properly effective authority.

4. That, in the opinion of this Association, society can be better protected against crime if police forces are so organized as to provide a high degree of continuity in office for all their personnel, including the chief and policy-directing heads thereof, and if the members of such forces are thoroughly trained in the technique of their work.

5. That this Association advocates the establishment of lay organizations to observe and publicize the facts concerning administration of justice, at least in districts where the truth is not otherwise discoverable by the public at large."

Medico-Legal Problems—The Report of the Committee on Medico-Legal Problems was presented by the new Committee Chairman, William C. Woodward, who specializes in this field for the American Medical Association. Dean Albert J. Harno, who served as chairman for the past several years, joined with Mr. Woodward in the Report. On the subject of admissibility of

evidence as to blood groups the report reads:

"Your committee is advised that scientists familiar with the principles and practice of blood grouping recognize that they may safely be used to establish any one of the following postulates:

1. That any given person is *not* a parent of a given child, or that he or she *may* be a parent of that child, but *not* that he or she is its parent.

2. That any person, whose blood grouping may be determined, is *not* identical with some other person whose blood grouping is known, or that, so far as blood grouping is concerned, he *may* be that person, but *not* that he is that person.

3. That blood found at the scene of a crime, or some of such blood, if in a suitable condition to permit the determination of the blood group to which it belongs, did *not* come from the victim of the crime, or did *not* come from a given suspect, if the blood of the victim or of the suspect is available for study; or that it *may* have come from one or from the other of such persons, but not that it *did* come from one or the other of them.

A few courts in the United States seem during recent years timorously to have admitted evidence of blood grouping in bastardy cases, but two objections have generally stood in the way of the admission of such evidence:

1. The difficulty of proving to the satisfaction of the court that the principles and practice of blood grouping are accepted as trustworthy within the limits assigned to them, by qualified students and practitioners of the science and art of blood grouping.

2. The difficulty of compelling

the parties to a proceeding to permit the taking of the specimens of the blood necessary for the determination of blood grouping.

The courts will be faced for a long time, with the difficult problem of determining the qualifications of persons proffered as expert witnesses in this field, particularly in areas remote from metropolitan centers; for methods, equipment, and materials are comparatively new and may reasonably be expected to show substantial developments in the future."

Concerning the use of lie-detectors, the Committee, in part, stated:

"Obstacles in the way of the use of so-called lie detectors for judicial purposes are to be found (1) in the possible presence of abnormal heart action and respiratory rhythm, due to disease or the use of drugs; (2) the difficulty of differentiating the effects of fear that even an innocent person may have when subjected to such a test, from the effects of fear resulting from guilt; (3) the possibility that a hardened criminal may be devoid of fear or able to conceal it; and (4) the necessity of convincing the court that the principles underlying the instrument are sound, the apparatus accurate, the operator competent, and the examination made under proper conditions. They can be overcome—to the extent that they are susceptible to be overcome at all—only by skill and experience on the part of the operator, and therein lies a danger; incapable and inexperienced operators, and possibly even venal operators, may do much harm. The courts can prevent harm being done in judicial procedure, by the exercise of wise discretion in the admission of evidence, but there is

no adequate protection except extreme care in the choice of examiners, when "lie detector" tests are applied privately to groups of employees, say, of a bank or the cashier's office in a department store.

The other obstacle in the way of the introduction in judicial proceedings of evidence based on the use of the "lie detector"—that is, the difficulty of satisfying the court of the authenticity and practical value of such evidence—is more difficult to overcome"

As to chemical tests to determine drunkenness the Committee sounded this word of caution: "After all, whether a person is or is not drunk or under the influence of alcohol is not legally a question of the amount of alcohol in his blood but primarily a question of conduct. The results of chemical tests may show the probability of such conduct but is of value primarily as showing the cause of such conduct when proven by other evidence."

The Committee again urged the establishment of medico-legal institutes, the abolition of the office of coroner and the substitution of the medical examiner system. The model expert testimony statute presented last year by Dean Harno (see 26 J. Crim. L. 292) is now being considered by the National Conference of Commissioners on Uniform State Laws.

Psychiatric Jurisprudence—
The Committee on Psychiatric Jurisprudence, now headed by Alfred Bettman, in cooperation with corresponding Committees of the American Medical Association, American Neurological Association,

and American Psychiatric Association, is studying the problem of the municipal, police or similar court, which deals with petty crimes and petty offenders. By way of explanation the report stated:

"The first major resolution adopted by this Committee was, in general, to the effect that every criminal and juvenile court have a psychiatric service to assist in the disposition of the offender, and that no criminal be sentenced for any felony until the court obtain a psychiatric report upon the offender, and that no prisoner convicted of a felony be released, paroled or transferred without a psychiatric report. In that resolution 'psychiatric' was not conceived of as being restricted to cases of mental disease, but as covering, in a large and comprehensive way, the investigation and interpretation of the personality of the offender and of his individual and social history. . . . While the said resolution mentioned the juvenile court, still the emphasis of the resolution was upon the sentencing or treatment of offenders convicted of felonies, and, excepting certain casual references, the petty offender and the police, municipal and other courts with jurisdiction over the disposition of the petty offender were not included within the scope of that resolution. No adequate analysis of the problem of crime can be made, indeed no substantial reduction of crime through the instrumentality of the administration of criminal justice can be accomplished, without facing or without a thorough and comprehensive attack upon the problem of the petty offender and of the jurisdiction, procedure and administration of the police and municipal and other

so-called inferior courts in the trial and disposition of the petty offender. The habitual criminal customarily starts his career with the minor offenses, and, in so far as the administration of criminal justice can reduce the growth of major crime, it is in or through these mistakenly called 'minor' courts that this reduction must be accomplished."

[The report of Judge Oscar Hallam's special committee which sharply criticized many aspects of the Hauptmann murder trial last year was not issued in printed form and as it received vast newspaper publicity it is not included here. Ed.]

Separate Courts of Criminal Appeal

—Those interested in the question of the advisability of creating separate courts of criminal appeal, such as now function in Oklahoma and Texas, will be interested in the recent report of the Committee on Administration of Justice of the California State Bar Association.

There will be on the ballot at the next general election in California a constitutional amendment to establish a new Appellate Court which will deal exclusively with criminal appeals. This proposal was submitted to The State Bar Committee on Administration of Justice for study and report to the Board of Governors and the convention. The committee unanimously disapproved the creation of such a court. They found that the proposed court would serve no useful purpose and particularly could not be relied upon to speed up appellate practice. "The problem of delay thus becomes largely an administrative problem, the

factors of which will be the same in any court of record, no matter what name is given to that court."

Many persons have held to the idea that criminal appeals should go to *specialists*, if reversals upon technicalities are to be avoided, and others have felt that special courts for criminal appeals would build up a "jurisdiction of reversal" and tend to become ultra-technical. The California Committee says:

"The District Courts of Appeal and the Supreme Court render decisions in all phases of the law, and keep properly balanced the various legal principles that constitute our jurisprudence. The rules of evidence in civil and criminal cases are intricately tied together to form a complete scheme which represents a part of our trial procedure. There is no need for a court of which the justices have any special qualifications for the purpose of passing on appeals in criminal matters. Quite to the contrary, the qualifications represented by an able and broad-minded jurist familiar with the application of legal principles to all forms of human conduct are the finest qualifications of all."

F. B. I. Accomplishments—A recent report, issued by J. Edgar Hoover, Director, states that during the fiscal year 1936, 3,905 convictions were secured in cases wherein Special Agents of the Federal Bureau of Investigation performed investigative work. The sentences imposed totaled 2 death, 9 life, and a total of 11,067 years, 2 months and 7 days. The total value of recoveries effected and savings to the Government in cases handled by the Bureau during the

fiscal year amounted to \$34,708,-815.39, whereas the expense of operating the Bureau during the year was approximately \$5,000,000. In other words, for every dollar which was spent for the operating costs of the Federal Bureau of Investigation during the year, approximately seven dollars was secured for the Government or individual citizens in property recovered or savings effected.

During the year, 2,496 stolen motor vehicles valued at \$1,025,-206.01 were recovered in National Motor Vehicle Theft Act cases wherein the Bureau performed investigative work. Since the enactment of this Act in October, 1919, a total of 42,121 stolen motor vehicles valued at \$26,043,515.73 has been recovered in cases in which the Bureau performed investigative work.

During the year, convictions were secured in 94.35 per cent of all cases investigated by employees of the Bureau which were brought to trial.

Since the passage of the Federal Kidnaping Law, approved June 22, 1932, the Federal Bureau of Investigation has performed investigative activity in 65 cases resulting in the conviction of 158 persons and the holding in custody of 15 more now awaiting trial. The Bureau has solved every kidnaping case in which it has performed investigative work. The sentences imposed have included 31 life sentences, 4 death sentences, and other sentences totaling 2,113 years, 11 months and 2 days; 3 culprits committed suicide; 5 were killed; 6 died by murder at the hands of their gang members; and 2 were lynched. Three additional subjects are awaiting sentence.

The Federal Extortion Act was approved July 8, 1932, and since that time the Bureau has performed investigative work in a large number of extortion cases. The results in these cases during the fiscal year 1936 included 86 persons convicted and sentences totaling 401 years, 5 months and 3 days.

On May 16, 1934, the President approved an Act of Congress making an attempt to rob or robbery of National Banks or member banks of the Federal Reserve System a Federal offense. On August 23, 1935, this Act was amended to include robbery of Insured Banks of the Federal Deposit Insurance Corporation. During the fiscal year 1936, there were 73 convictions in this class of cases and sentences imposed totaled 1 life and 1,127 years, 3 months and 1 day. Due to the activities of the Federal Bureau of Investigation in these cases insurance companies recently announced a reduction of 20 per cent in bank insurance rates in 35 states.

During the fiscal year 1936, 1,089 Federal fugitives from justice were located by Special Agents of the Federal Bureau of Investigation in various parts of the country. In addition, 5,731 fugitives from justice were located through the efforts of the fingerprint division of the Bureau, making a total of 6,820 fugitives from justice located during the fiscal year.

New York Bail Laws—"The Panel" for May-June, 1936, reports the passage of several laws sponsored by the Association of Grand Jurors of New York County. Chapters 308 and 55 of the Laws of 1936

amend the Code of Criminal Procedure (new sections 556-b and 556-c) and the Lien Law (new article 10-B) respectively so as to impose surety bond liens on real estate given as security in recognition of bail. Prior to these enactments, mere evidence of ownership of real estate by the surety satisfied the requirements of justification. In consequence, the same parcel was frequently used to justify on several bonds; the bondsman had little interest in fulfillment of the conditions of the bond and small fear of forfeiture, while the state's security was illusory. It is now provided that a lien shall attach to such real estate upon the execution of the undertaking, and that notice of such liens shall be filed with the proper county recording officer by the District Attorney. It is hoped that either performance of the bond will be compelled through the surety's interest in release of the lien and fear of forfeiture, or that the state's security will be rendered more valuable. Unofficial advices indicate that so far the new laws are working well. Time and practice are expected to disclose opportunities for mechanical improvement and concentration of the procedure for preparing and filing notices of liens.

To complete the reform with reference to real estate security, it was provided in Chapter 891 of the Laws of 1936 (code section 569), that the assessed value of the real estate, after deducting any other liens, mortgages, etc., must be not less than the amount of the undertaking. The purpose of the statutory limit is to avoid the heaping of liens where the bondsman has no interest in a marketable equity. A stricter requirement in the bill

before amendment was found undesirable in the light of local assessment and market conditions in parts of the state. The present requirement may prove insufficient in some circumstances. Time will allow the development of a proper measure, the fundamental aim being quite sound. This particular bill also provides that all other liabilities are to be reckoned in fixing the personal worth of sureties.

Noteworthy Statutes—From time to time we have reported in these columns the states which have adopted various recommendations of the Interstate Commission on Crime. Many other movements have been noticed in the recent session laws of the various states. The Uniform Narcotic Act has been adopted within the past year by Georgia, Alabama, Colorado, Connecticut, Delaware, Illinois, Indiana, Maryland, Nebraska, New Mexico, North Carolina, Utah, Ohio, Oklahoma, Oregon, Wisconsin, West Virginia, South Dakota and California. The California act is somewhat more comprehensive than the Uniform Act. The Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases passed in Arkansas, Idaho, Indiana, Michigan, Pennsylvania, West Virginia, and Wyoming. The Uniform Criminal Extradition Act was adopted in Indiana, Nebraska, Wyoming, and Oregon. Restrictions on the sale and possession of firearms were imposed in Indiana, Georgia, Idaho, Massachusetts, South Dakota, and Washington. Alibi notice bills were successful in New York, Kansas, Utah, and Oklahoma. Departments of Justice

were created for New Mexico, California and South Dakota. Wyoming set up a Commission for the prevention of crime, a Bureau of Investigation was created as a part of the New York Police Department, and a California law allowed comment on the evidence by the trial judge and comment upon the failure of the accused to take the stand. Various acts against sedition (e. g., teachers' oath requirement) received attention by the legislatures of Arizona, Georgia, Massachusetts, Michigan, New Jersey, Vermont, Texas, Arkansas, Delaware, Indiana, and Tennessee.

Reporters—Congress of Comparative Law—At the Second International Congress of Comparative Law to be held in 1937 several reports dealing with phases of the criminal law will be made by the following United States scholars: Clarence Morris, Dean of Law Faculty, State University, Laramie, Wyoming, *Criminal and Civil Sanctions*; Newman F. Baker, Professor of Law, Northwestern University, Chicago, Illinois, *Functions of the Public Prosecutor*; Sheldon Glueck, Professor of Law, Harvard University, Cambridge, Mass., *Reformation of Delinquents*; Jerome Hall, Professor of Law, Louisiana State University, Baton Rouge, La., *The maintenance or abandonment of the rule "nulla poena sine lege"*; Karl Loewenstein, Professor of Political Science, Amherst College, Amherst, Mass., *The maintenance or abandonment of the rule "nulla poena sine lege"*; Rollin M. Perkins, Professor of Law, State University, Iowa City, Iowa, *Pardon, Parole and Probation*.

Maryland Survey by P. I. R. A.—The creation of the Prison Industries Reorganization Administration by President Roosevelt in September, 1935, its duties and the membership of the Board, were discussed in a "Current Note" appearing in the November-December issue of last year (see 26 J. Criminal Law 627). Further comment was made on the Survey of the P. I. R. A. in the May-June, 1936, issue (see 27 J. Crim. L. 139). Through the courtesy of Judge Joseph N. Ulman, Chairman of the Board, and Dr. Louis N. Robinson, a member, we have received additional information of interest.

In order to provide the facts necessary for a sound appraisal of the existing penal and correctional system of the particular state with special reference to its industrial problems and the formulation of a practical prison program, the Board has laid down the following policy: "Although primarily interested in the solution of the prison labor problem, the Board realizes that many, if not all, phases of penal and reformatory treatment are closely related to it. Its solution depends on the existence of adequate institutions for prisoners, with provision for classification and segregation according to the needs of each main group, and on the development of educational and other rehabilitative measures. The work program has also a definite relationship to the probation system and to the parole system, since both of these govern in part the number of individuals who are either sent to prison or kept there. All of these phases must be studied against the background of the state itself, and with an eye to its ability to carry out program once ap-

proved. The official relations of the prisons to other state institutions must be considered, as well as the needs of those institutions for products which the prisons might supply. Careful attention must be given to the constitution and laws of the state, in order to prepare the way for appropriate legislation where needed."

As directed in the Executive Order creating the Administration, all work done in any state is in cooperation with the state authorities and it is only on specific invitation from the proper state authorities that the Prison Industries Reorganization Administration enters into a state. Since its organization this Administration has been engaged, in cooperation with the state authorities, in working out proposed programs in the following states: Maryland, Delaware, West Virginia, Kentucky, Vermont, Arkansas and Oklahoma. In addition thereto, numerous other states have invited the services of this organization and from the reception of the first published report on the State of Maryland it appears that much headway will be made in the solution of this tremendous problem.

The Maryland Survey, "The Prison Labor Problem in Maryland," was released in June, 1936, and is a thorough report reaching proportions comparable to many general crime surveys. The five chapters were devoted to Maryland's Penal System, Work Opportunities, Classification and Non-Industrial Activities, Probation and Parole, and the Employment of Women, followed by a legal report on the Program by R. E. Elwell, Counsel.

The Maryland Survey has re-

ceived much attention by the time this note is being written. The July midmonthly issue of "The Survey" contained an article by Ruth A. Lerrigo based upon the work of the P. I. R. A. and newspaper comment was general. However, Judge Ulman's statement of principles, contained in his letter of transmittal to Governor Nice, should be preserved in the pages of this Journal.

"The first step in reorganizing prison industries is the installation of a completely planned and rounded correctional and penal system.

Prisoners must work. The Supreme Court's decision upholding the Hawes-Cooper Act leaves no other practicable means of employing prison labor in Maryland than the State-Use system. The term State-Use should be construed broadly, to include Public Works of an appropriate nature. A capable Superintendent of Industries should be employed to develop the adequate state-use market which exists in Maryland.

The reclamation of prisoners is a complex operation. Education will help in some cases. Training and constructive guidance is essential. There are many opportunities for constructive employment outside the prison industries.

A properly planned penal system should provide ample housing in which the ordinary decencies of life can be maintained. Prisoners should not be coddled, but should be treated as human beings.

Classification of all prisoners is imperative. Some are dangerous persons against whom society must be protected rigorously. Some are merely unfortunate and clearly reclaimable. There is a large group

which falls between these two extremes. Almost all will return to society sooner or later. Penal institutions should be planned and operated to deal effectively with each class.

The personnel of a penal system should include persons trained in the sciences of psychology, psychiatry and case-work. Scientific training cannot take the place of common sense and knowledge of men. But common sense can get valuable help from men of special training.

There should be a separate institution for women. Its warden and guards should be women. Here, especially, intelligence will count far more than walls and bars in the protection of society.

Too many men are sent to prison. Society can be protected against many criminals by other means—*provided* that mechanisms are created and used under which individuals susceptible of reformation outside prison walls are selected wisely and supervised thoroughly.

Probation and parole officers, prison wardens, prison guards, all who deal with prisoners, are faced with difficult and delicate tasks in human readjustment. They should be selected for merit and retained in service regardless of political upheavals.

No program, however well conceived, will work unless judges, prosecuting officers, prison officials and the public understand it, believe in it, and work together for its success. The people are interested. The time is ripe for concerted action."

California Publications—The University of California Press is pub-

lishing Professor August Vollmer's new book *The Police in Modern Society*, which will include a discussion of the various problems presented to the police for solution, as well as a brief analysis of the problems associated with the selection and training of policemen and the misconceptions regarding the efficacy of punitive measures in crime prevention. This book should be ready for distribution about September first.

The Press is also printing V. A. Leonard's manuscript *Police Communication Systems*. This book is the first attractive work on the subject, and might be called a treatise. It discusses every type of police communication that has ever been used from the beginning of time. The historical phases are well developed and Mr. Leonard has brought the material up to date, which includes a discussion of regional communicational hook-ups, state, national, and international communications systems. Not only has he discussed in detail the systems used in various countries throughout the world but he has also included the means of strengthening communication systems of the smaller police departments. These two books belong to a series of five which are being published by the University Press dealing with Police subjects.

C. D. Lee, of the Berkeley Police Department, is writing the last chapter of a book dealing with the subject of criminal investigation. This will bring Gross' book up to date and will be useful not only to police officials, attorneys and judges, but will be extremely helpful as a text-book for institutes now offering courses in criminal identification and investigation.

Clarence Taylor's work on traffic engineering is the only book of its kind ever published and fills a gap in police literature. Mr. Taylor has attempted to summarize all the work of the traffic engineers of this country with a view of presenting their evidence in readable and understandable form to the police of the world. Mr. Taylor's manuscript is completed in its first draft and he is now editing it for the first time. This work should be ready for publication not later than December first. Mr. Lee's book will shortly follow.

Board of Psychiatric Examiners—
A Board of Psychiatric Examiners in the Mental Hygiene Department [New York] authorized to make rules and regulations governing the practice of psychiatry and to grant certificates to qualified psychiatrists, enacted by the last Legislature, has been organized by the election of Dr. Frederick W. Parsons, Commissioner of Mental Hygiene, as chairman. Members in addition to Dr. Parsons, who was designated in the law, are Dr. Lloyd H. Zeigler of the Albany Medical School, Secretary; Dr. Israel Strauss of New York city, appointed by the State Medical Society; and Dr. Vernon C. Branham, Superintendent of the Woodbourne Institution for Defective Delinquents, appointed by Commissioner Edward P. Mulrooney of the State Department of Correction. Dr. Zeigler was appointed by Commissioner Frank P. Graves of the State Education Department.

Hereafter every lunacy commission appointed by a court to examine the mental condition of persons who plead insanity as a de-

fense must include a qualified psychiatrist. Dr. Parsons stated that the examiners have established application forms for persons seeking appointment. Psychiatrists in order to qualify must have had at least three years' hospital experience and must be actively engaged in mental cases.

"The law will do away with the sometimes outrageous fees charged for lunacy examinations by limiting such fees to \$300," said Dr. Parsons. "Although the courts will continue to appoint these commissions, usually consisting of three members, the discretion as to the size of the fee will be taken from the court." (From "Correction" June, 1936.)

Psychopathic Clinic Staff—The Psychopathic Clinic of the Detroit Recorder's Court, consisting of Lowell S. Selling, M.D., Ph.D., Director; Russell T. Costello, M.D., Physician (part time); Helen L. Flinn, Senior Psychologist; and Alan Canty, Junior Psychological Investigator, has added the following staff appointees: Doctor John A. Larson, Former assistant criminologist for the State of Illinois, and former assistant professor of psychiatry at Rush Medical College, is the assistant director; Doctor Stuart Lottier, former teaching

fellow in sociology at the University of Michigan, has been appointed junior sociologist; Doctor Dwight Chapman, former instructor in psychology at Harvard University, has been appointed junior psychologist.

White Slave Traffic—Although many believe that the "Mann Act" has become a dead letter through the policy of non-enforcement, a recent statement by J. Edgar Hoover, Director of the Federal Bureau of Investigation, shows that this is not true. He said: "During the fiscal year 1936, 298 convictions were obtained in the Federal Courts of persons violating the White Slave Traffic Act, resulting in total sentences of 835 years, 6 months and 14 days. Fines amounted to the sum of \$42,830, which is in excess of fines for any fiscal year for the past ten years. During the month of June, 1936, there were more convictions for violations of the White Slave Traffic Act than in any month during the past three years.

Persons prosecuted under this Act are not always men, but in many instances are women who act as procurers or aid men in inducing the victims to transport themselves interstate for purposes of prostitution."