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## Current Notes

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## CURRENT NOTES

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N. Y. Crime Legislation—The ninety-second Annual Report of the Prison Association of New York, E. R. Cass, secretary, covered the work for the year 1936. Included were the usual recommendations to the Legislature, a study of the prisons, and the relations of the Association to other organizations. Particularly interesting was the excellent survey of "Crime Legislation in New York State" in which the results of the Governor's Crime Conference were detailed:—

A widely discussed and somewhat confused feature of the 1936 session of the Legislature was Governor Lehman's Crime Program, which had its origin in a four-day Conference called by him in the fall of 1935, the program of which was carefully planned several months in advance, and administered with an unusual degree of alacrity and thoroughness. Impressive was the unquestionable sincerity and determination of the Governor to do something about the crime problem. It was clear that he was not to be content with a flurry of enthusiasm or with just another report. Subsequently, the Governor stated, "The next step is to capitalize on the work of the Conference," and to that end he appointed a follow-up committee to work out a comprehensive pro-

gram for consideration by the Legislature. During the Conference and to those who worked on this committee, it was evident that the Governor had no desire to be regarded as the sole originator of the various proposals and recommendations. He, however, was willing to rely on the conclusions of the follow-up committee, and to assume responsibility to that end.

The Conference meetings in Albany were participated in mainly by those who had actual experience and had given long study to the many perplexing problems. This fact, as well as the Conference itself, received high approval from the press throughout the State. Therefore, the assertion frequently made during the legislative session, in combating certain parts of the crime program, to the effect that the proposals were the outgrowth of "crack-pots" and inexperienced people, was unjustified and an insult to those rich in judicial experience, as well as those engaged in the detection and prosecution of crime, and those having to do with probation, parole and the administration of institutions. These qualified people, at the call of the Governor, gave of their best, and what he finally presented as a crime program was a crystallization of their views on what was regarded as the most practical of

the many suggestions offered.

At the beginning of the legislative session, press statements by both political parties gave the hopeful impression that there would be no opposition to the findings and recommendations of the Governor's Crime Conference, but very soon after the Legislature got under way and crime bills began to appear there developed murmured opposition, which soon gathered force. It was not long before it was realized that a legislative fight would be on, if for no other reason than that the various recommendations and bills were identified with the Conference."

[While a large number of bills sponsored by the Conference and the Association passed, many important ones failed]—

In his special message setting forth recommendations for the improvement of criminal law enforcement, and thereby presenting to the Legislature a composite of the ideas developed during his Crime Conference, the Governor stated:

"Crime prevention is the most appealing phase of the entire crime problem. Every year more recruits are added to the long list of known criminals and juvenile delinquents.

I recommend that there be set up within the Executive Department a Bureau of Crime Prevention, the function of which shall be to assume leadership in the stimulation, development and coordination of local crime prevention activities."

To accomplish this purpose a bill, Senate Int. No. 402, was introduced, providing for a division of crime prevention in the Executive Department, and clearly indicating the field of activity of the proposed division. The bill provided for a

director, and a companion bill set up an appropriation of \$60,000. Both bills were passed by the Senate, but failed to receive favorable action in the Assembly.

In an effort to improve the efficiency of county police forces a bill, Senate Int. No. 405, authorizing the consolidation of county, city, town, and village, and special police units within counties outside of New York City with a population of more than 50,000, was introduced, passed in the Senate, and lost in the Assembly.

The proposal for an uncompensated commission on police training, to coordinate the existing facilities maintained by municipalities and by the State, as well as the proposal for a system of "in-service" training for police, failed of legislative approval.

The Governor recommended the creation of a State department of justice modeled upon the Department of Justice of the United States, and indicated the law enforcement functions of such a department. A bill, Senate Int. No. 400, proposed an amendment to the Constitution to cover the suggestion. It was not reported by the Senate Judiciary Committee, and the identical bill in the Assembly met a like fate. The Governor's proposal was not at all acceptable to the Assembly, and finally there emerged from that body a bill, Int. No. 1315, amending the Correction Law and providing that there shall be in the Department of Correction two bureaus, to be known as the bureau of administration and the bureau of justice. Assigned to these bureaus would be the functions, powers and duties of the Division of State Police and the Division of Parole in the Executive

Department. This ambitious proposal met with the approval of the Assembly, but was defeated in the Senate.

Highly controversial was the proposal that the Constitution be amended, to provide that in all criminal non-capital cases the Legislature may authorize verdicts to be rendered by a vote of five-sixths of the number of jurors, instead of by an unanimous vote. "The adoption of this recommendation," said the Governor, "will make impossible the ever-recurring problem of the 'hung' jury." The bills in support of this proposal created something of a storm, especially in the Assembly. Senate Int. No. 2 was passed finally by the Senate, but lost in the Assembly.

Another of the highly controversial bills was that complying with the Governor's recommendation that legislation be enacted which will permit either the district attorney or the defendant's counsel, who has called a witness to the stand and has been surprised by unfavorable testimony given by such witness, to confront the witness with prior inconsistent statements made by him in writing or under oath. Senate Int. No. 10, on this recommendation, passed the Senate but was defeated in the Assembly.

Included also in the highly controversial and bitterly opposed legislation was a bill in accord with the Governor's recommendation that legislation be adopted which will permit the trial judge to analyze and review the evidence of a trial and to make such comment and to express such opinion on the weight of the evidence as may be necessary for the guidance of the jury, provided that the court

instruct the jury that such comment is advisory only and in no way binding upon the jury. To comply with this recommendation Senate Int. No. 3 was passed in the Senate but defeated in the Assembly.

Another of the Governor's recommendations which was bitterly opposed was that represented in Senate Int. No. 389, which had as its purpose the removal of the necessity for the corroboration of the testimony of an accomplice of the defendant before conviction of the defendant may be obtained. This bill was defeated in the Senate and also in the Assembly.

The Governor recommended that legislation be passed which will permit the court and the district attorney to comment on the fact that the defendant in a criminal trial has refused to take the stand and testify in his own behalf. In keeping with this recommendation Senate Int. No. 4 was introduced, passed in the Senate, and defeated in the Assembly.

To expedite the selection of jurors, the Governor recommended that legislation be passed which will permit the court rather than counsel to examine jurors called to serve in a particular trial as to their qualifications. Senate Int. No. 246, to accomplish this purpose, met with defeat.

[Two of the items which passed were of special interest to the editor]—

"A major abuse," stated the Governor, "attaching to the discretion now vested in the district attorney is the acceptance by him of a plea of guilty to a lesser crime than that charged." In his message to the Legislature he devoted considerable space to this subject. To remedy the situation, Senate Int.

No. 390, was introduced and provided that when a plea is accepted by the district attorney it shall be the duty of the district attorney to submit to the court a statement in writing, in which his reasons for recommending the acceptance of such plea shall be clearly set forth. This bill is now chapter 23.

In his message the Governor laid special emphasis on the rehabilitation of institutional inmates and pointed to the development and expansion of an educational program. In the Executive Budget the Governor allowed additional personnel for educational purposes, and, regardless of all the legislative maneuvering on and deletion of the budget, it is gratifying to note that the item for the increase in the educational personnel and equipment survived. With the interest and aid of the Governor, education in the institutions of the Department of Correction is rapidly becoming a reality.

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As usual, the Prison Association of New York is to be congratulated for unceasing pressure to carry out its legislative program. Of course, many of its sponsored bills fail. But each session shows success in some of its measures. It is to be hoped that all States may have organizations of like character to recommend wise criminal laws and to oppose those of only temporary expediency.

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**Crime Prevention**—A significant article by Brien McMahon, able Assistant Attorney General of the United States, appeared in the June, 1937, News Bulletin of the Osborne Association. Mr. Mc-

Mahon's topic was Crime Prevention. His introduction and conclusion were of considerable interest.

"A bank is robbed; a child is kidnapped; a citizen is murdered. Immediate action is imperative. The thief must be caught; the kidnapper apprehended, the child returned; and the murderer prevented from killing others. We find here something analogous to the work of the physician, who ministers to the sick and quarantines the patient with a contagious disease. No intelligent person can question the necessity of this immediate program, in which the police, the prosecutor, and the prison official all play a vital and fundamental part. The role which I and my associates in the Department of Justice play is a definite part of this immediate program. But along with such a program we have come more and more to realize that efforts must also be made to get at the roots—in short, to prevent what often turn out in the end to be sociological disasters. We have turned again to the analogy in the field of medicine, where we have been impressed time and again with dramatic illustrations of the importance of prevention as compared with cure.

Or, to use another and more timely analogy,—the floods which have devastated great portions of the Ohio and Mississippi valleys. There is something utterly futile about the last-minute task of erecting sand bags on a levee, later dynamiting the levee, setting up shelter stations, and performing all of the other acts which are performed in the hysteria of the moment as the flood reaches its crest. There is something terribly tragic

in any scene in which a helpless humanity struggles with a disaster which it knew to be inevitable, which it could have prevented, and which it finds too late has struck with death and destruction.

In recent years as never before, the demand has been made in all fields—medicine, flood control, and crime control—that more attention be given to prevention.

It is significant to my mind that the able director of the Federal Prisons, Sanford Bates, recently resigned his position to engage in preventive work. There is something futile about a criminal law enforcement program which loses sight of the necessity of crime prevention. There is something futile about the erection of prison walls to confine men who might have been saved in the first instance. If we stop to realize that every time a prison door opens and ten men walk in, at least nine men walk out, we cannot help but wonder just how much better off society is, and those men are, because of their apprehension, conviction, and confinement in idleness.

But there comes a real satisfaction whenever we turn our hand to a task which will make our present process less futile, and which will restore to youngsters of this country some measure of that life, that liberty, and that happiness which is their proper heritage."

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F. B. I. Report—Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation, has summarized the "accomplishments of the Bureau for the fiscal year ending June 30, 1937. He says:

"During the fiscal year 1937, 4,624 convictions were secured in cases wherein Special Agents of the Federal Bureau of Investigation performed investigative work, as compared with 3,905 convictions secured during the fiscal year 1936. The sentences imposed totaled 2 death, 13 life, and 13,322 years and 11 months, while during 1936, the sentences imposed totaled 2 death, 9 life, and 11,067 years, 2 months and 7 days. The total value of recoveries effected, fines imposed, and savings to the Government in cases investigated by the Bureau during the fiscal year 1937, amounted to \$41,438,370.22, as compared with \$35,148,287.83 during the fiscal year 1936. The expense of operating the Bureau during the fiscal year 1937 was approximately \$5,800,000. In other words, for every dollar which was spent for the operating costs of the Federal Bureau of Investigation during the fiscal year 1937, more than seven dollars was saved or returned to the Government or individual citizens in property recovered, fines imposed, or savings effected.

During the year, convictions were secured in 94.67 per cent of all cases investigated by employees of the Bureau which were brought to trial, as compared with convictions in 94.35 per cent of cases during the fiscal year 1936.

On July 1, 1937, there were 7,360,458 sets of fingerprint records on file in the Identification Division of the Federal Bureau of Investigation. A total of 1,382,666 fingerprint records was received during the fiscal year and identifications were effected in 54.4 per cent of the criminal fingerprints received. Included in the fingerprints received during the year

were 279,101 fingerprints of dead persons, non-criminal prints, and Civil Service fingerprint records and 244,959 sets of fingerprints forwarded to the Bureau by citizens for inclusion in the civil identification files. On July 1, 1937, there were 10,465 law enforcement agencies contributing criminal identification data to the Bureau. There were 81 foreign countries and territorial possessions whose identification bureaus were cooperating with the Federal Bureau of Investigation in the international exchange of criminal identifying data on July 1, 1937.

The Bureau is currently receiving an average of 1,000 sets of fingerprints each day from citizens who desire to place their prints on file for their protection."

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**A. B. A. Meeting**—At the sixtieth Annual Meeting of the American Bar Association, held in Kansas City, Missouri, from September 27 to October 1, the Section of Criminal Law met three times on September 28. At the morning session Professor Fred E. Inbau of Northwestern's Scientific Crime Detection Laboratory made a demonstration of the work of that organization. The annual dinner occupied the evening session and the afternoon was devoted to the following:

"The Prison System in Illinois," Colonel Henry Barrett Chamberlin, of the Chicago Crime Commission, and President of the American Institute of Criminal Law and Criminology.

"Ten Years of Cooperative Effort," Dr. Winfred Overholser, Chairman of the Section of Forensic Psychiatry and Chairman of the

Committee on Legal Aspects of Psychiatry of the American Psychiatric Association.

**Reports of Committees:**

Cooperation with American Legislators Association, Judge Richard Hartshorne, Chairman, Newark, N. J.

Cooperation with American Prison Association, Sanford Bates, Chairman, New York City.

Cooperation with International Association of Chiefs of Police, Clarence V. Beck, Chairman, Topeka, Kans.

Criminal Procedure, Phillip Lutz, Jr., Chairman, Indianapolis, Ind.

Medico-Legal Problems, William C. Woodward, Chairman, Chicago, Ill.

Personnel in Criminal Law Enforcement, Newman F. Baker, Chairman, Chicago, Ill.

Psychiatric Jurisprudence, Alfred Bettman, Chairman, Cincinnati, Ohio.

**German Trials**—The Prison Journal for July, 1937, contained an article, "The Philosophy of Criminal Justice in the United States and in Germany," by Dr. Marie Monk, former Judge of Civil Court in Berlin. Dr. Monk's comparison of the two countries contained much of interest, especially her summary of German trials:

"Most criminals in Germany are tried before the 'Schöffengericht,' with one or two trained judges and two lay judges (one of whom may be a woman). Serious felonious crimes, e. g., murder cases, are brought before the 'Schwurgericht,' jury court with three trained and six lay judges. This is only a jury by name, as it lacks the special

features the the jury trial. The panel is not picked by the defendant and the District Attorney. In challenging one of the judges or jurors they have to give good cause. The trained judges and the lay judges in the 'Schöffengericht' as well as in the 'Schwurgericht' together find the verdict and impose the sentence. A verdict of guilt calls for a majority vote of two-thirds of the judges. Defendant and District Attorney have the right of appeal, which is often taken. Each defendant has the right to have a lawyer. In more serious offenses the court has to assign a lawyer even if the defendant pleads guilty. These private attorneys get a fee paid by the State. The whole procedure is rather informal. The presiding judge examines the witnesses who are asked to give a comprehensive report of their knowledge of the case. There is no cross examination, though the lawyer of the defendant and the District Attorney may ask questions. The record gives only a short summary of the procedure. The minutes are not taken in detail by shorthand. In weighing the evidence the court is not bound by rules but uses its own judgment. The decision is given in writing and

must state the facts and the reasons for the length of the sentence. The criminal law may give the court a choice between a fine and/or a sentence from one year to fifteen years' imprisonment. In any case the sentence has to be definite. Only the Board of Pardons may free the prisoner before his term expires. He may also be discharged when he has served at least three-fourths of his sentence. Germany has no Probation Department connected with the courts. Social Welfare Workers of the Welfare Department of the City or County make investigations on the request of the court and in all juvenile cases. There is also no Parole Department connected with correctional institutions. Social welfare workers may be called upon to take care of discharged prisoners."

Procedural Statistics—The Bureau of the Census recently released the statistics of the Massachusetts, Pennsylvania, Minnesota and several other state courts of general criminal jurisdiction for the calendar year 1936. The procedural outcome for the states mentioned is set out below.

*Massachusetts*

Procedural Outcome	Number	Per Cent
Defendants disposed of.....	2,891	100.0
Eliminated without conviction.....	578	20.0
Dismissed .....	312	10.8
Jury waived, acquitted by court.....	45	1.6
Acquitted by jury.....	221	7.6
Other no-penalty dispositions.....	...	..
Convicted .....	2,313	80.0
Plea of guilty.....	1,981	68.5
Court finds guilty.....	64	2.2
Jury verdict guilty.....	268	9.3

*Pennsylvania*

Procedural Outcome	Number	Per Cent
Defendants disposed of.....	22,067	100.0
Eliminated without conviction.....	6,727	30.5
Dismissed .....	2,674	12.1
Jury waived, acquitted by court.....	122	0.6
Acquitted by jury.....	3,769	17.1
Other no-penalty dispositions.....	162	0.7
Convicted .....	15,340	69.5
Plea of guilty.....	9,048	41.0
Court finds guilty.....	498	2.3
Jury verdict guilty.....	5,794	26.3

*Minnesota*

Procedural Outcome	Number	Per Cent
Defendants disposed of.....	1,911	100.0
Eliminated without conviction.....	231	12.1
Dismissed .....	168	8.8
Jury waived, acquitted by court.....	1	0.1
Acquitted by jury.....	46	2.4
Other no-penalty dispositions.....	16	0.8
Convicted .....	1,680	87.9
Plea of guilty.....	1,586	83.0
Court finds guilty.....	6	0.3
Jury verdict guilty.....	88	4.6

**Puerto Rico Study**—By legislative act a sum of money was appropriated to support a survey of the administration of criminal justice in Puerto Rico. The Chancellor of the University was authorized to appoint the director. He chose Professor Santos P. Amadeo, who has done graduate work at Michigan and Northwestern, and Professor Amadeo will spend the school year 1937-38 in the work.

cution and defense of criminal cases. The code is expected to be submitted for adoption to the American Bar Association, the New York State Bar Association, and other bar groups. The proper courts will be petitioned to enact parts of the code as court rules.

Among those announced as members of the committee were Justices William Harman Black and Charles Poletti, of the New York State Supreme Court; Justice James E. McDonald, of Special Sessions; Judge James Garrett Wallace, of General Sessions; Dean William R. Richardson, of the Brooklyn Law School, and George Gordon Battle and Elvin N. Edwards, lawyers.

**Legal Ethics Code**—The New York County Criminal Courts Bar Association, through its president, Robert Daru, has announced the appointment of a committee of judges, lawyers and prosecutors to draft a code of ethics for the prose-

**Juvenile Treatment in Norway—**Children under 14 years of age are not punished for offenses committed by them. They are not tried by courts, but the law has set up a special authority, the "Council of Guardianship" (*vaergeraad*) to deal with such cases, and educational measures have supplanted punishment.

Older children, offenders against the law, are liable to punishment. If such offenders, however, are less than 16 years of age, educational measures may accompany, or replace, punishment. The law deals not only with actual but potential delinquents.

The law provides that a Guardianship Council be set up in every commune composed of the judge, the local clergyman, and five other members, men and women (including a physician), elected for two years, by the municipal council.

Children under 18 years of age may, by order of the Guardianship Council, be placed either in a responsible family or an approved public institution for children for the following reasons:

1. If they have committed a punishable offense, appear to be of bad character, or are uncared for;
2. If, because of bad character or parental or guardian neglect, they are uncared for or ill-treated, or show symptoms of depravity, and are not amenable to a warning;
3. If they have proved obdurate to all measures intended for their reform, and their placing out seems to be requisite to prevent complete depravity.

The Council may also instruct the persons in charge of the child,

or his school-master, to inflict suitable punishment.

The Guardianship Council takes action on an application made not only by the Public Prosecutor (police) but also on one made by the child's parents, their neighbors, the school, the public relief authority, the Board of Health, or even its own initiative.

The Council sits in secret; minutes of the meeting are kept. Decisions must state the reasons on which they are based. The parents or guardians of the child are permitted to be present at the meetings.

Children found not to be depraved must be placed preferably in a family or in an orphanage. If a child over school age is placed in a family he may be regarded as a servant, apprentice or other similar capacity. Boys over school age may, instead of being placed in a family, be sent to sea if they so desire. The Council must maintain regular supervision over such children.

The State establishes reformatories (*skolehjem*). Boys and girls may not be sent to the same institution. Private reformatories may be established if they conform to certain regulations and are approved by the King. Each institution is managed by a director or directress appointed or approved by the King. The Minister of Education and Worship is responsible for general inspection.

Children under nine may not be placed in a reformatory. Children having spent at least a year in a reformatory may be released provisionally and placed in a family. The director must keep check on such a child and his treatment.

A reformatory school (*tvanks-*

skole) may be opened by one, or by several communes collectively, subject to the approval of the King.

Children placed by the Council in a family, orphanage or reformatory, may be retained there until they are 21 years of age. The cost of placing children out in accordance with the law is shared jointly by the State and the communes. A certain amount may be recovered from the child's parents. S. W. D. (From the Norway Report to the International Penal and Penitentiary Commission.)

**Personnel Report**—At the time when this material was gathered for the Sept.-Oct. issue of the Journal, the Editor had access to only one report of the various committees of the Section of Criminal Law of the American Bar Association. That was the Report of the Committee on Improvement of Personnel in Criminal Law Enforcement. The Committee dealt largely with police problems and the recommendations were:

*First*, that there should be very thorough examinations, physical, mental, and temperamental, plus a long probationary period, before a man is added to any police force. If a man is not cut out to be a policeman he should be eliminated *at the outset*, and not carried along at public expense until he dies, or is fired by a civil service commission, a thing which rarely happens.

*Second*, that all police departments should maintain "in-service" schools which should be in constant operation for the continued improvement of the police personnel; that salary increases and promotions in rank should be dependent upon a combination of high standing in advanced police exam-

inations and in demonstrated excellence in service. In other words we need more "merit system" in policing.

*Third*, that policing should be considered to be a "profession," comparable to its standing in Europe. It should take its place alongside of law, medicine, and engineering in honor and dignity.

The general recommendation was that the Section adopt the following resolutions:

(1) That it is the opinion of this Association that there should be a reduction in the case-loads of probation, parole, and crime prevention agents and that such workers should be selected through competitive examinations and should be given permanence of tenure.

(2) That the police forces should be organized to provide for permanence in tenure, but rigid civil service requirements should not be allowed to prevent promotions based upon merit, necessary in all "career" services.

(3) That the local bar associations and lawyers generally should stimulate the organization of "in-service" training schools for local police forces.

(4) That local bar associations be requested to appoint committees to survey local government agencies for the purpose of ascertaining administrative and personnel weaknesses therein so far as they affect criminal justice.

The recommendations of the other Committees will be presented in summary form in the next issue of the Journal.

**Correction**—In the July-August issue of "Current Notes" the statement was made, "In spite of the

fact that no university to date has developed professional courses for the instruction of police or practicing criminologists, most universities have almost all of the facilities that would be needed."

A correspondent from Indiana writes:

"I believe that this statement is subject to correction and amendment. Professional courses for the instruction of police have been developed by Indiana University. The development has been under way since 1925. The professional 4-year course, however, was established in 1936, and is now in full operation. Some students who took the professional courses last year, and the intensive course this summer, are to become members of the Indiana State Police next month. Their preparatory college work, and their experience, made it possible for them to make this progress in professional police training."

We are glad to print this statement for we realize that Indiana University and several other excellent institutions are developing programs of police education and we do not hesitate to commend these developments.

But professional police education still has a long way to go before it can rate with other kinds of professional education. The training for law, medicine, dentistry, and divinity is based upon a general academic preparation and often a

degree is required for entrance to the professional school. The "professional" work is intensive but covers never less than three years—and those years are devoted to strictly "professional" subjects. We did not have in mind the offering of professional courses so much as the work of the first rate *professional schools*—such as schools of medicine or law.

In its program Indiana University is showing what may be accomplished by a union of its academic, law, and medical schools with the state police force, all under sympathetic and progressive direction. Indiana now is offering "professional courses" and may yet be the first university to have a truly professional police school. At the present time the Indiana curriculum is based upon the principle championed by Vollmer which is that professional police training must consist mainly of general academic study. The four-year course is believed to be the first of its kind and extent in a state university or in an American university of general academic and professional scope. The State Police-State University combination in a four-year course, supplemented by intensive summer sessions like the recent session conducted from July 5 to July 31, 1937, is considered to be not only an original but also a permanent contribution to police progress in this country.