

Fall 1938

## Current Notes

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### Recommended Citation

Current Notes, 29 *Am. Inst. Crim. L. & Criminology* 437 (1938-1939)

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## CURRENT NOTES

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**A. B. A. Meeting** — The Annual Meeting of the American Bar Association was held during the 4th week of July in Cleveland. The Section of Criminal Law as usual had 3 section meetings, one of which was the annual dinner at which an address was made by Governor Clyde R. Hoey of North Carolina on the subject of "Probation and Parole." At the first meeting Dr. Clarence W. Muehlberger, Cook County Coroner's Chemist and expert at the Scientific Crime Detection Laboratory, presented an illustrated lecture. More than a dozen committee reports were made and lack of space prevents even a summary of them. Most of them were printed in the advance program of the Association and others are to be printed in various law reviews.

Chairman Rollin M. Perkins in his report stated:

"One of the greatest contributions to the administration of criminal justice would be the rescue of the actual practice of criminal cases from the disrepute into which it seems to have fallen. Criminal cases are defended now and then by members of the bar of unquestioned ability and character. Nothing should be said which would cast the slightest discredit upon those who render such service. In fact they should be highly commended, because the only hope for

improvement lies in that direction. The sad misfortune is that there has grown up a false opinion on the part of the public in general, shared by many in the profession, that the defense of criminal cases is of necessity a tainted branch of the profession which is quite beneath the dignity of one of the leaders of the bar, if not entirely dishonorable. This notion operates in a vicious cycle. (a) Many leaders of the profession tend to avoid this branch of the practice on the assumption that it is not entirely respectable. (b) The fact that most of those who would keep it on a high plane are careful to avoid it, tends to leave it in the control of those who are willing to place it on a lower level.

"Another vicious cycle might be mentioned. (a) Because the leaders of the bar tend to a large extent to limit their practice to civil cases there has been a tendency for law schools to slight criminal law and criminal procedure in their educational program. (b) The lack of a proper background with reference to this part of the law tends to cause members of the bar to lose sight of the responsibility which the profession owes to the community in this regard."

The Committee on Criminal Procedure reported:

"The committee feels that greater uniformity in criminal procedure

among the several states should be a definite goal of attainment. We believe that the movement toward removing the barriers of state lines in removing criminals in extradition proceedings and in obtaining the testimony of non-resident witnesses should progress. We believe that prompt and speedy trials of all criminal cases should be attainable and that from trials should be removed all of those technicalities which often enable a criminal to escape punishment. We believe that the procedure after conviction and sentence should be studied.

"The time has come when we can no longer afford to be provincial in dealing with crime. We believe that eventually there must be set up a uniform system of criminal procedure in all of the states so that pursuit and conviction will be as easy in one state as in another, and so that law enforcement officers will not have to familiarize themselves with forty-eight different sets of laws in order to deal efficiently with crime. The committee has deemed it appropriate to give special attention this year to subject matters in the criminal law field along procedural and closely allied subjects which appear to be in step with the current speeding-up program of the Association, and which at the same time, if either adopted in principle or substance or studied with the idea in mind of future applications to conditions in our procedural structure needing change, will most surely assist in the attainment of the objectives of modern criminal procedure."

It then proceeded to discuss short form indictments, joint defendants in criminal cases, peremptory challenges, instructions,

unanimous verdicts, alibi and insanity defenses, bail bonds and recognizances, and depositions for the State. On the last topic, a unique one, the committee stated:

"This subject is not, strictly speaking, a matter of criminal procedure, but one of evidence. There is no suggested provision in the Institute's Code of Criminal Procedure on this subject. The state is in few instances now permitted to take depositions before trial or to have notice of defense witnesses until they appear on the witness stand. On the other hand the defendant may, in many jurisdictions, take depositions at any time after indictment and thus go into the state's case without limitation, examine all witnesses under oath, thereby laying the foundation for impeachment and possible perjury prosecutions if there is any substantial difference in the testimony given upon the trial. It appears doubtful whether legislature could give the state the right to take depositions in criminal cases, in view of the constitutional provision that the defendant shall be confronted with the witnesses against him, which in turn would require the defendant to attend the taking of depositions. This might not be feasible under all circumstances. It is recommended that this subject be considered by the committee for the following year with a view to definite recommendations."

The Committee on Improvement of Personnel in Criminal Law Enforcement advised:

"We recommend that in each state there be established the power of removal of and the appointment of successors to a local prosecutor by an officer or board with state-wide jurisdiction, where there has been a breakdown of law

enforcement in such community."

On the subject of jurymen, it stated:

"Another important link in the chain of enforcement agencies is the jury system. Too often in the large urban centers do juries fail to perform their function properly. Judges and jury commissioners playing up to the galleries have limited the call for jury service to those out of work. The psychological effect of a long period of idleness serves rather to disqualify a man or woman for proper jury duty. Jury service is a public duty and not a 'relief' job. It must not be so treated. The jurymen and the public generally cannot be reminded too often that a jurymen is for the time being an important public officer charged with a duty of grave concern, not alone to the defendant and others directly interested in the particular case, but to the public at large. We recommend the establishment of reasonable standards of fitness for jurymen and the intelligent use of literacy tests, and tests of sight, hearing, and understanding."

The Committee on Education and Practice made a study of the Law School Curriculum and reported:

"The investigations which have been made by the sub-committees since the organization meeting indicate that a final report cannot be made at the present time. From the inquiries made of the law schools, it is clear that extensive effort will be necessary in analyzing and classifying the present methods of instruction in criminal law. The information thus far received by the Committee shows that a substantial number of law schools are alive to the problem and have made or are making changes in their curricula to meet

modern conditions, by increasing the attention given to the teaching of criminal law, especially in its administrative and sociological aspects. The Committee realizes the difficulty of finding, without careful investigation and full consideration, some practical means that will satisfactorily enable a large number of young lawyers to acquire needed legal and social experience in the trial of criminal cases. Recent steps taken in New York City to encourage practice in the Criminal Courts of that City are of interest to all metropolitan communities."

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**Women Offenders**—A Committee appointed by Mrs. Robert F. Herrick of Massachusetts to study the problems presented in the book, "Five Hundred Delinquent Women" by Sheldon and Eleanor Glueck, recently printed its report, entitled, "Women and Girl Offenders in Massachusetts." The report was published by the Massachusetts Child Council, Inc., and copies may be obtained from that organization, 41 Mt. Vernon Street, Boston.

The Herrick Committee was formed in 1934 as a tribute to the late Mrs. Jessie D. Hodder, formerly superintendent of the Reformatory for Women. The Herrick Report (which deals with the special problems of female delinquency only) will be followed by a General Report of the Committees of the Child Council, engaged in the survey of juvenile delinquency in Massachusetts.

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**Prison Publications**—The June, 1938, issue of "Correction," published by the New York State De-

partment of Correction, contains an article entitled, "Editors in Prison Gray" by James Hargan. The writer appended a directory of prison publications, listing them by states. He says:

"The average citizen scarcely knows that such publications exist. The Library of Congress received only nine for filing. By communicating with the 297 federal and state correctional institutions that exist in this land of freedom, however, the writer has been able to find 76 prison journals. One of these, founded June, 1937, in Connecticut, has followed the trend toward pocket-size magazines and presents the best art and writing from other penal publications; it calls itself *Prison Digest*."

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**Swiss Code**—The *New York Times* for July 4 discusses a Unified Penal Code recently adopted in Switzerland to replace the 22 cantonal systems of criminal law by a single national one. The account reads:

"Switzerland took an important step toward centralization today when the people adopted by popular referendum a single national penal code replacing the separate codes of the twenty-two cantons. This action is as if the people of the forty-eight States in the United States voted to transfer sovereignty in criminal law to Washington, completely unifying it throughout the country and replacing State prisons with Federal institutions. Supporters of a unified Swiss code had been working twenty-five years for today's victory.

"After a sharp campaign the Swiss made this decision by one of the closest votes in years—357,784

to 310,108—with 55 per cent of the voters going to the polls. The division by cantons was twelve and a half to nine and a half.

"The voters divided largely on national lines, for the cantons favoring the measure were all German, although some smaller German cantons and St. Gallen joined the Latin ones in opposition. Because of this division on national lines and because of the smallness of the majority, the election result is causing some concern to the Swiss, who are more anxious to preserve the substance of national unity than to unify the penal code.

"Opponents of the measure had based their case almost entirely on nationalities' and States' rights and had argued the dangers of centralization by citing Nazi Germany. Parodying the Austrian plebiscite slogan, their posters had urged the electorate to vote against 'One Fold, One Penal Code, One Prison.' The fact that the government of Berne Canton, which was favorable to centralization, had refused for several days to let such parody posters appear in its territory increased the political dangers of the vote.

"This popular consultation, however, was in such sharp contrast from every viewpoint to the plebiscites across the border in Germany as to show that the dangers to Swiss liberties seen by the partisans of States' rights are still very remote. Although the issues have been sharply argued, the election went off quietly.

"Supporters of the new code urged it on humanitarian grounds and as a means of proving Swiss unity to neighboring countries. Already known for the advanced character of their criminal laws, the Swiss have now gone still

farther in this direction. The new code brings the more backward cantons up to the high standard of the more advanced. It abolishes the death penalty in the few cantons that still inflicted it.

"The code also annuls the anti-Communist laws recently adopted by Geneva and other French cantons."

Chicago's Speedy Justice — The Clerk of the Cook County Criminal Court, Thomas J. Bowler, recently completed a survey of the court records for a ten year period. It was found that the time elapsing between indictment and trial averaged 163 days in 1928. This time had been reduced to 11 days at the end of 1937. Moreover, there has been a steady reduction of the docket of felony cases, using the date, September 1, of each of the ten years. The following table illustrates this statement:

1928.....	1,861
1929.....	1,101
1930.....	1,033
1931.....	962
1932.....	880
1933.....	866
1934.....	573
1935.....	237
1936.....	144
1937.....	81

The survey reveals that the longer a case was delayed in trial the slighter became the chances of conviction. Seldom did a case delayed more than thirty days result in a conviction. It ended either in probation, a minor jail sentence, or a not guilty verdict. This being so Chicago should be congratulated for doing away largely with the greatest handicap to criminal justice—delay.

Federal Delinquency Act — In the July issue of Federal Probation Hon. Homer Cummings, Attorney General of the United States, discussed the topic, "Federal Law and the Juvenile Delinquent." The Attorney General summarized the provisions of the new Federal Juvenile Delinquency Act. He said:

"The principal features are as follows:

- "1. It applies to all persons under eighteen years of age.
- "2. It applies to all Federal offenses committed by juveniles, other than offenses punishable by death or life imprisonment. However, the Attorney General is granted the option of prosecuting a juvenile on a charge of juvenile delinquency or for the substantive offense of which he is accused. The purpose of this provision is to make it possible, if it appears desirable, to prosecute the more serious juvenile offenders in the same manner as adults.
- "3. Juvenile delinquents are to be prosecuted by information and tried before a district judge, without a jury, who may hold court for that purpose at any time and place within the district, in chambers or otherwise. Informal procedure of this kind has been found in many of the States conducive to attaining the humane and beneficent objects of such legislation. The consent of the juvenile is, however, to be required to a prosecution for juvenile delinquency under the Act, instead of for the substantive offense.

- It has been held that minors may waive the constitutional right to a trial by jury, in the same manner as adults.
- "4. In the event the juvenile is found guilty of juvenile delinquency, he may be placed on probation or may be committed to the custody of the Attorney General for a period not exceeding his minority, but in no event exceeding the term for which he could have been sentenced if he had been convicted of the substantive offense. The Attorney General is empowered to designate any agency for the custody and care of such juveniles. The purpose of this provision is to make possible the use of such State and local institutions and quasi-public homes, as may appear to be suitable.
- "5. The Attorney General is to be notified of the arrest of any juvenile and may provide for his detention in a juvenile home. The purpose of this provision is to reduce the detention of juveniles in jails to a minimum.
- "6. The Parole Board is given power to parole a juvenile at any time.
- "7. A saving clause is contained as to the District of Columbia, in view of the fact that the District has its own juvenile delinquency statute.

"In making any appraisal of the new act, let me urge you not to place too much emphasis upon its terminology. For example, in the statute we speak of such matters as offenses, trial, prosecution. The reason for this, which may not be apparent at first, is that while

State legislation establishing a juvenile court system is based on the theory that the State should act as *parens patriae*, the Federal Government, under its limited powers, is not in any sense a guardian of juveniles, save in the event of a violation of Federal criminal law. Another explanation lies in the fact that it was not deemed advisable to depart too far from strictly legalistic language, in view of possible opposition that might otherwise have developed, thereby imperilling the passage of the act."

Elsewhere in the article the Attorney General stated:

"When I entered upon my duties as Attorney General five years ago, I determined that I would strike every blow that I could in the fight against crime. In the Department of Justice we have naturally devoted our principal efforts to the traditional fields of Departmental activity—investigation, prosecution, and imprisonment. We have sought to be effective in all three. We have developed new techniques and we have secured the passage of laws calculated to strengthen our hands. That these efforts have met with widespread popular approval I make no doubt. But I must confess quite frankly to you that I have been troubled by the comparatively inconsequential advances in the basic matter of crime prevention. What can the Department of Justice—the National Government's law office—do about it? What contribution can we make? What responsibility should we assume? Such questions are disturbing."

It is to be hoped that Mr. Cummings' plan will be carried out

fully. Never before has an Attorney General shown such energy and skill in the criminal side of his work. He deserves the support of Congress in making it possible to go further into the study of the "basic matter of crime prevention." Mr. Cummings' enlightened attitude was shown in a recent broadcast entitled "They All Come Out." He said in his conclusion:

"I might summarize with this suggestion, that in the administration of our penal institutions we have endeavored to make them places in which there is hope rather than idleness, health rather than disease. We feel that this is a protective policy to which all realists willingly subscribe, for we are constantly faced with the one undeniable fact, that some day these men will all come out."

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Cass Statement—Mr. E. R. Cass, General Secretary of The American Prison Association, commented upon the recent scandal at the Philadelphia County Prison. His statement, made August 25, 1938, reads as follows:

"It is disappointing and shocking to read the story of brutality resulting in the death of four inmates of the Philadelphia County Prison at Holmesburg, Pennsylvania. It suggests that there is something seriously wrong in the State of Pennsylvania when one recalls the recent death of a boy at the State Industrial School at Huntingdon, resulting in court action.

"The question naturally arises: Why do we have such shameful exhibitions in the city and state regarded as the cradle of prison reform in America? Is it public indifference and lethargy, or is it

politics, often resulting in unsuitable personnel, or the lack of a program for the humane and intelligent operation and functioning of penal and correctional institutions? These are questions having an important bearing on public welfare and protection.

"It was under the leadership of William Penn, nearly two hundred years ago, that there was created a penal philosophy substituting for the barbarous code of corporal punishment, mutilation and degradation, a program of imprisonment as punishment, and for reformation. This program attracted the attention of the whole world. If this great forerunner of Quaker humanitarianism, it was written, one hundred years afterwards:

"The founder of the province of Pennsylvania was a philosopher whose elevated mind rose above the errors and prejudices of his age, like a mountain, whose summit is enlightened by the first beams of the sun, while the plains are still covered with mists and darkness."

"Penn's outstanding purpose in the treatment of criminals and offenders was, when possible, rehabilitation. He had been in prison. He had been a martyr. He had endured months of the promiscuous horrors of Newgate in London, and thus, on the basis of experience, strove for a better way of dealing with his fellowman.

"Shameful again it is that in one of the largest States of the Union there should be in our time such a reversion to barbarism as is evidenced at Holmesburg. In a report to the Governor of the State of Pennsylvania, by a Joint Legislative Committee, in July, 1938, a very significant recommendation

reads: 'Modernize the State system of penal institutions.' Further, Hon. Paul N. Schaeffer, President Judge of the Common Pleas Court of Berks County, testified before the Commission: 'We need an intelligent prison program . . . We need a Department of Correction. . . . Have a Department of Correction with a Board of Control in office for eight years, one appointed each year. There should be a full time scientific board.'

"Before the same Commission the Hon. Curtis Bok, President Judge of Common Pleas Court No. 6 of Philadelphia, referring to recommendations looking to a unified state penal system of maximum, medium, and minimum institutions, indicated that he was convinced that institutions should be educational and not penal.

"The section of the report relating to penal institutions concludes with an impressive statement: 'That a general overhauling of our present penal system is needed is evidenced by the unusual interest in this entire subject shown by those who participated in the public hearings.'

"Therefore, it would seem most opportune for the people of the State of Pennsylvania to become *prison conscious*. *As a part of this there should be a re-examination of the plans now under way for the construction of a proposed Alcatraz, to be known as the Mount Gretna Prison.* These plans have been frowned upon by experienced and qualified persons in prison work. It is hoped that the unfortunate and startling occurrences at the Holmesburg Prison and at Huntingdon will be followed by an unceasing endeavor to determine the neglect and guilt of those involved, and that the people will

make it known to the authorities in the State of Pennsylvania and in the City of Philadelphia *that they expect that human beings will be treated as such, even though they be prisoners.*"

**Chappell Appointment**—The Department of Justice announced July 31, 1938, that Richard A. Chappell of Atlanta, Georgia, has been appointed Supervisor of the United States Probation System. He succeeds Col. Joel R. Moore, who helped to establish the Probation System in 1930 and who resigned in March, 1937, to accept the post of Assistant Director of the Michigan Bureau of Prisons and Warden of the State Prison of Southern Michigan. Mr. Chappell filled the vacancy left by Col. Moore, as Acting Supervisor and remained in that capacity until his present appointment.

As supervisor of Probation Mr. Chappell will be accountable for the administration, standardization and coordination of the work of probation officers in 92 Federal courts. These probation officers are charged with investigation and supervision of 32,000 Federal probationers, parolees, and prisoners on conditional release.

At the recent conference on Social Work at Seattle Mr. Chappell presented a paper: "The Basis in Law for the Social Treatment of the Adult Offender." His conclusion was as follows:

"Probation and parole, as instruments for the social treatment of adult offenders, have become firmly established in our system of criminal justice. The efficacy of each device depends upon the extent to which the techniques of social case work are allowed to function with-

in the necessary legal framework. If that framework does not allow free play to the machinery of social treatment, probation and parole are materially handicapped. To my mind, therefore, it is essential that a spirit of mutual understanding and friendship be fostered between social workers and those more closely connected with the formulation and administration of the law. Neither group acting independently can attain the best results in dealing with the adult offender. Social workers must realize that the efficiency of their procedures is, in the main, dependent upon the authority of the law. Legislators, judges and lawyers, on the other hand, need to understand more clearly the technique and objectives of social treatment, and, in the light of this understanding, so adjust the legal framework as to facilitate the attainments of the ends."

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N. Y. Report—The Seventh Annual Report of the Commissioner of Correction on "Crime Statistics for the Year, 1936" has been printed and circulated. It is the most detailed state report we have seen outside of the special crime surveys. In effect it is an annual crime survey. It covers 332 pages, and through tables gives complete tabulation concerning arrests, offenses, procedural mortality, sex, race and nativity, and sentences along with much other detailed information.

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Correctional Institutions — The American Prison Association has released its "State and National Correctional Institutions of the United States of America and

Canada." It lists by State and Province all institutions,—capacity, population, age, term, personnel numbers, per capita cost, and budget. It is well worth having and its pages disclose considerable information.

We did not find the overcrowding of institutions to be acute as in years past but a cursory glance reveals many overcrowded places, e. g., Indiana Reformatory with a capacity of 1400 has 2037 inmates; Folsom Prison in California—capacity 1744—contains 2814; and old Joliet, built in 1858 for 1100 has 1882. In the Federal system both Leavenworth and Atlanta are filled far beyond capacity.

The per capita cost of maintenance is illuminating. Confinement costs little but treatment is expensive. Almost all the institutions of fine reputation show increased costs. "We get what we pay for."

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Good Time Act—In a booklet, recently published by J. Cookman Boyd, Parole Commissioner, for Maryland, was a statement of his "platform" and various observations concerning the parole situation in Maryland. He said:

"In 1937 the Maryland Assembly passed an act which is outstanding in its sophistry. Urged by its proponents as an aid to the solution of the prison-labor problem, this act in effect provides that prisoners may now have their sentences diminished by as much as one-third, after which diminution they are released absolutely from the prison.

"If the purpose of this act was to reduce the prison populations by accelerating the release of a large number of prisoners, it has doubtless proven quite successful.

"As an aid to the prison labor problem, however, the bill is patently absurd, inasmuch as it purports to compensate prisoners for 'exceptional industry' at a time when there is less work in the prisons than there has ever been. Because of the retroactive operation of this act, many of its real beneficiaries are the large group of prisoners who were immediately released because of work they had done before the law was passed.

"As it now stands, the law is highly discriminatory in so far as it penalizes those prisoners who are physically unable to work, and those for whom the officials find no work. In its application, it is susceptible of extreme favoritism, and therefore conducive to increased prison discontent.

"Assuming that, in the course of time, an increase in the number of 'State-use' industries will enable a majority of the inmates to claim the benefits of this act, what will be the result? It means that thousands of prisoners, young offenders and hardened recidivists alike, will be unconditionally released from our prisons long before they have completed the terms imposed upon them by the courts, *under no supervision whatsoever*.

"To quote from a recent article on parole by Governor Lehman of New York, they will be *'turned loose on an unsuspecting community, unguarded, their movements unwatched, their gathering places unrevealed, free to ravish and rob without let or hindrance . . .'*

"As a result of my experience in this work, I am convinced that this method of releasing prisoners is grossly improper, and potentially dangerous to the State, and I feel it incumbent upon me to urge in

the strongest possible terms that the law be changed as soon as possible.

"Does it not seem stupid that we should provide post-prison supervision for those prisoners who, because of the evident probability that they will readjust themselves in the community, have been released on parole, while at the same time we make no provision whatever for the supervision of the larger group of prisoners released under this act? These men are in greater need of counsel and supervision than the average parolee. Against this group society is entitled to the greatest degree of protection."

We are reminded that Richard A. Chappell, Supervisor of the U. S. Probation System recently remarked:

"Another statutory obstacle to parole is found in the laws regulating deductions for good prison conduct. In most cases the good time statutes were enacted before the advent of parole. In only a few states has there been an attempt to bring them into harmony with the parole laws. As a practical matter, some system of tangible rewards for good behavior may be necessary if prison discipline and order is to be maintained. It is fortunate, however, that a mechanical device intended for a totally different purpose has been allowed to prevent or impede parole treatment.

"There are innumerable instances in which the operation of good time deductions has resulted in the absolute and unconditional release of a prisoner long before he was eligible for parole consideration. And where good time deductions do not prevent parole entirely, they may so curtail the

period of supervision by the application of credits to the maximum sentence that no effective treatment can possibly be initiated."

Too often conduct in prison is used as a basis of release. The old offender has learned how to profit thereby while the younger man, who might be a far better risk outside, often proves to be the most unruly convict during his confinement. At the recent meeting of the American Bar Association a parole advocate said, "When they have demonstrated that they can obey prison rules, we feel that they are ready to obey the law and then we release them." Should not "good-time-off-laws" be repealed in toto?

Items from England—(The following items are from *The Howard Journal*, Autumn, 1938.)

**THE INFANTICIDE ACT.** The Infanticide Act (1938) makes the offence committed by a mother causing the death of her infant child, one of infanticide instead of murder or manslaughter, if the child is less than a year old. Behind the promotion of this measure was a volume of indignation and pity aroused by the cruelty of passing sentences of death, certain to be commuted, on mothers who, loving their children, killed them to save them from a menace of insanity, disease or desperate poverty which had driven the parent to a frenzy of despair.

The Act would not have saved more than a very few women of the many who in such circumstances have suffered the agony of a murder trial and death sentence during the last twenty years. Why humane men and women in Parliament accepted this measure of

futility without at least attempting to transform it into one more effective is beyond our comprehension. The National Council for the Abolition of the Death Penalty prepared a bill which would serve this purpose. There was real public feeling which would have supported such a measure. That public indignation has been wasted and an opportunity lost and the new Act means almost exactly nothing.

"BRIXTON". The preumptions of innocence, that distinguishing feature of British justice on which we rightly pride ourselves, is of increasing importance in a world of rapid encroachment on the liberty of the individual. So it is vital that, for our own sake and for the general level of justice throughout the world, we should guard it jealously. The danger is not that it should be abandoned openly but that it should become a piece of humbug.

Bail is one important aspect of the problem. In 1936 4,221 persons committed for trial were kept in custody and 4,404 were bailed. The figures for bail granted to remanded persons are not available. There are three sound reasons which may determine a Court to remand a person in custody. The first is a risk that he may decamp, but the number of absconders is negligible. The second is that he may do serious injury to person or property during the interval: such cases are very rare. The third, in the case of the person against whom a *prima facie* case is proved and who is therefore committed for trial, may be the desirability of keeping him under medical observation before the trial.

Poverty of the accused is not a good reason for refusing bail. But

we know a Court which asked for a £1,500 surety from an unemployed man. A bare objection by the police is not sufficient reason for refusing bail. But many magistrates defer so often without question to the *ipse dixit* of the Chief Constable that it appears as if the decision as to bail rested not with the bench but with the police.

These are wrongs which might be righted if poor prisoners were legally represented in the Police Court by a freer use of the Poor Prisoners' Defence Act.

The treatment of the unconvicted prisoner while in custody is another story. He goes to Brixton or to the remand wing of a provincial local prison. He wears his own clothes if they are presentable, has an unlimited number of letters in and out, and may have a visit every day as well as visits from his solicitor. But in the main the whole machinery of the remand prison suggests a presumption of guilt rather than innocence. The fortress prison, the wire-netted visiting boxes with the officers overhearing conversations, the censored letters, the usual badly cooked, badly served prison fare (except for those who can pay for other food), the silence of the so-called association group of those who have not been in prison before, the ban on smoking except during exercise—all combine to make the remand prison indistinguishable from a prison for the convicted, save for its lack of such things as concerts, lectures and unofficial visitors.

The presumption is just a piece of humbug if the remand period is used for any purpose but the safe custody of the prisoner, if stray words overheard by officers are reported for the help of the police, if the defence is handicapped more than is the inevitable result when the accused is deprived of his liberty.

We are aware of the difficulties and especially of the problem of dealing with the old lag on remand for the fiftieth time as a "presumed innocent" though even he may be innocent. But it is time for us to raise our standards of treatment for the untried prisoner. Sir Samuel Hoare so clearly means business in the other prisons that we are sure he will be ready and keen to abandon the Brixton level. As a first major step we suggest that a small establishment be set up in London for the custody of untried men who have not been in prison before. It should allow freedom to smoke, to play games indoors and outdoors, to receive visits from friends untrammelled by ordinary prison safeguards. It should have a hospital well staffed and well equipped for medical and psychological observation. It should neither look, nor feel, nor smell like a prison. The Commissioners since 1922 have done a great deal against great odds for the sentenced prisoners. We hope that they will now do something effective for the unconvicted, whose innocence is always to be presumed and is frequently established. "Brixton" is a denial of the presumption.