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Current Notes

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CURRENT NOTES

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Arrest Act—One of the most important problems, involving legal research, is being studied by several legal scholars headed by Professor Sam Bass Warner of Harvard University. For two years he has made an intensive study of the law of arrest, devoting much of his time to the practical aspects of the problem. Professor Warner has gone into many police departments and questioned officers concerning arrest practices. Moreover, he has spent many nights in squad cars gaining first-hand information. He has participated in hundreds of arrests, legal and illegal, throughout the Country. In an article in this Journal, "Investigating the Law of Arrest" he stated the problem—"to ascertain whether the police did, or could, operate within its limitations and, if not, what changes were necessary to make it both a practical standard of police conduct and a safeguard of personal liberty." (31 J. Crim. L. 111, May-June, 1940).

Notable progress has been made in developing a practicable law of arrest. A tentative draft of an Arrest Act was printed in this Journal in the Sept.-Oct., 1940, issue (31 J. Crim. L. 317), and a further development as reflected in the Rhode Island Act in the Jan.-Feb., 1941, issue (31 J. Crim. L. 608). We present below a still later evolution of the Arrest Act as developed by Professor Warner. We do so for the following reasons:

(a) This Act will be most important. It is certain that it will be widely copied and will serve as a model for many States.

(b) The Act is of great interest to the readers of this Journal. Many subscrib-

ers, especially police officers, have followed this research eagerly.

(c) Professor Warner needs and will use criticisms and comments of any kind. To help in worthy and important work, we ask you to read the latest version of the Arrest Act and mail your suggestions to Professor Warner at the Harvard Law School, Cambridge, Mass.

ARREST ACT

Section 1. Definitions. As used in this act:

"Arrest" is the taking of a person into custody in order that he may be forthcoming to answer for the commission of a crime.

"Felony" is any crime which is or may be punished by death or imprisonment in a state prison. Any other crime is a misdemeanor.*

"Peace officer" is any sheriff or deputy sheriff, mayor or city marshal, constable, police officer or other person authorized by law to make arrests in a criminal case.

Section 2. Questioning and Detaining Suspects.

(1) A peace officer may stop any person abroad whom he has reason to suspect is committing, has committed or is about to commit a crime, and may demand of him his name, address, business abroad and whither he is going.

(2) Any person questioned as provided in subsection 1 who fails to identify himself and explain his actions to the satisfaction of the peace officer stopping him may be detained and further questioned and investigated.

* In states in which violations of municipal ordinances are not crimes, it is recommended that they be made such for the purposes of

arrest. This may be accomplished by changing this sentence to read—Any other crime or any violation of a municipal ordinance is a misdemeanor.

(3) In no case shall the total period of detention provided for by subsections (1) and (2) exceed two hours. Such detention shall not constitute an arrest and shall not be recorded as such in any official record. At the end of any such detention period the person so detained shall be released unless arrested and charged with a crime.

Section 3. Searching for Weapons.

A peace officer may search for a dangerous weapon any person whom he is questioning or about to question as provided in section 2, whenever he reasonably believes that he is in danger if such person possesses a dangerous weapon. If the officer finds a weapon, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person.

Section 4. Arrest—Permissible Force.

(1) No unnecessary or unreasonable force or means of restraint may be used in detaining or arresting any person.

(2) A peace officer is justified in using force dangerous to human life in making an arrest only when:

(a) The arrest is lawful

(b) The arrest is on a charge of felony.

(c) There is no other apparently possible means of effecting the arrest, and

(d) The officer has made every reasonable effort to advise the person to be arrested that he is a peace officer and is attempting to make an arrest and has reasonable ground to believe that the person is aware of the fact.

Section 5. Resisting Arrest.

If a person has reasonable ground to believe that he is being arrested and that the arrest is being made by a peace officer, it is his duty to submit to arrest and refrain from using force or any weapon in resisting it regardless of whether there is a legal basis for the arrest.

Section 6. Arrest without a Warrant.

(1) An arrest by a peace officer without a warrant on a charge of misdemeanor is lawful whenever:

(a) He has reasonable ground to believe that a misdemeanor has been committed in his presence and that the person to be arrested has committed it.

(b) He has reasonable ground to believe that a misdemeanor has been committed, tho not in his presence, and that the person to be arrested has committed it and will escape if not immediately arrested.

(2) An arrest by a peace officer without a warrant on a charge of felony is lawful whenever:

(a) A felony has actually been committed by the person to be arrested, although before making the arrest the officer had no reasonable ground to believe the person guilty of such offense.

(b) The officer has reasonable ground to believe that a felony has been committed and that the person to be arrested has committed it.

Section 7. Arrest on Improper Grounds.

If a lawful cause of arrest exists, the arrest is lawful even tho the officer charged the wrong offense or gave a reason that did not justify the arrest.

Section 8. Arrest by Virtue of a Warrant not in Officer's Possession.

An arrest by a peace officer acting under a warrant is lawful even tho the officer does not have the warrant in his possession at the time of the arrest, but, if the person arrested so requests, the warrant shall be shown to him as soon as practicable.

Section 9. Summons Instead of Arrest.

In any case in which it is lawful for a peace officer to arrest without a warrant a person for a misdemeanor,* he may instead issue to him a summons in substantially the following form:

(Insert form appropriate for your state)

Upon failure to appear, a warrant of arrest may issue. Wilful failure to appear in answer to such summons may be punished by a fine of not over one hundred dollars or imprisonment for not over 30 days.

* In any state in which violations of municipal ordinances are not crimes and in which it is not thought desirable to make them such for all

purposes of arrest, it is recommended that section 9 be applied to them by adding "or violation of a municipal ordinance" after the word "misdemeanor."

Section 10. Release of Persons Arrested.

The chief of police (substitute where appropriate commissioner of police or other head of police department) or any officer in charge of a police station to whom has been delegated that authority may release instead of taking before a magistrate any person in his station who has been arrested without a warrant:

(1) When he is satisfied either that there is no ground for making a criminal complaint against such person or that such person has been arrested for drunkenness and no further proceedings are desirable.

(2) When such person was arrested for a misdemeanor and has signed an agreement to appear in court at a time designated, if the officer is satisfied that such person is a resident of the county in which the police station is located and will appear in court at the time designated.

(3) A person released as provided in subsections 1 or 2 of this section shall have no right to sue any police officer on the ground that he was released without being brought before a magistrate.

Section 11. Length of Detention.

If not otherwise released, every person arrested shall be brought before a magistrate within twenty-four hours of arrest unless a judge of the [district] court of the [district] where he is detained or of the [district] court of the [district] where the crime was committed for good cause shown orders that he be held for a further period of not exceeding twenty-four hours, if he be a resident of this state or forty-eight hours, if he be a non-resident.

Section 12. Identification of Witnesses.

A peace officer may stop any person whom he has reasonable ground to believe was present when a crime was committed or when an automobile accident occurred and may demand of him his name and address. If any such person fails to identify himself to the satisfaction of the peace officer, the officer may take him forthwith before a magistrate. If such person fails to identify himself to the satisfaction of the magistrate, the latter may require him to furnish [an appearance] bond or commit him to jail until he so identifies himself.

Section 13. Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Prison Association Report—The ninety-sixth Annual Report of the Prison Association of New York, covering the activities of the Association for the year 1940, has been printed and distributed. As usual the accomplishments of this active group are of first order and deserve the careful attention of criminologists throughout the country. The continued interest in new legislation, the Youth Correction Authority, psychiatric services, guard schools, the problem of the psychopathic delinquent, education in prison, prison labor in national defense, and various conferences of penal administrations is shown in the 1940 report.

A summary of bills before the New York Legislature was presented, showing those approved and disapproved by the Association. The introduction states: "To combat crime there must be attack on many fronts, since there is no specific cause or cure. The making of laws for the improved administration of criminal justice, as it relates to court procedure, probation, parole and institutional administration, is of basic importance. Therefore, the Association has through almost its entire career concerned itself with bills before the Legislature." The State of New York is fortunate to have watchful, critical and experienced officers interested in the work of the Legislature. Approved bills of general interest were:

Assembly Int. 53, Senate Pr. 1640: Extends to courts of special sessions and police courts provisions which require that a defendant be advised of right of counsel and given facilities for communicating with counsel. *Chapter 423.*

Assembly Int. 195, Pr. 1864: Makes provision relating to offenses not bailable by inferior courts apply to any violation of Public Health Law relating to narcotic drugs, which is defined as a misdemeanor under Sec. 1751-a, Penal Law. *Chapter 607.*

Senate Int. 434, Pr. 2039: Authorizes Court of Claims to determine claim of any person erroneously convicted of felony through error of judgment in identification after confinement in state prison and subsequent proof of innocence or pardon by governor, no judgment to be given for more than \$5,000. *Failed of passage.*

Senate. Int. 526, Pr. 537: Requires grand juries after July 1, 1940 annually to inquire into status of indictments remaining undisposed of for more than one year prior to convening of grand jury and to report thereon to the court. *Failed of passage.*

Senate Int. 531, Pr. 542; A Int. 659, Pr. 670: Provides for establishment, operation and maintenance of experimental state camps for treatment, care, occupation and rehabilitation of adult male vagrants, tramps and inebriates and appropriates \$125,000. *Failed of passage.*

Senate Int. 874, Pr. 969: Authorizes attorney general as well as relatives or creditors of persons imprisoned in state prison to apply for appointment of committees of the property, provides for payment of any surplus after payment of debts and support, to reimbursement of state for maintenance, the remainder to be held until death or discharge of prisoner, and makes other changes. *Failed of passage.*

Assembly Int. 1156, S. Pr. 2540: Provides that the N. Y. State Vocational Institution is correction dept. shall be for the care, treatment and education of male persons who are from 16 to 19 years old and who have been adjudged juvenile delinquents, disorderly persons, wayward minors or guilty of any other offense except crimes punishable by death or life imprisonment and repeals provision relating to transfer of N. Y. house of refuge to correction dept.; prisoners returned from any reformatory for resentence are to be in custody of sheriff. *Chapter 663.*

Senate Int. 973, Pr. 2564: Gives person who believes that a grand jury is investigating charge that he has committed a crime, the right to appear and give evidence before grand jury upon signing waiver of immunity and if opportunity is not given indictment shall be set aside; court may submit case to another grand jury. *Chapter 643.*

Assembly Int. 4, Pr. 2461: Provides that persons protecting and guarding buildings or grounds of institutions under the jurisdiction of the correction, health, mental hygiene or social welfare departments of the state shall not work more than 8 hours a day, 48 hours or 6 days a week except in case of emergency or upon request to work one additional day a week in a period of seven weeks. Approved in principle. *Vetoed.*

Assembly Int. 182, Pr. 182: Provides that persons arrested or detained, except by warrant of parole board, shall be taken immediately before magistrate, or, in N. Y. City, if no magistrate is available, to nearest prison or institution not under police dept. record to be kept of time of arrest and arraignment with names and addresses of all interviewers. Approved in principle. *Failed of passage.*

Assembly Int. 188, Pr. 188: Provides that person charged with crime or detained as witness in institutions shall be examined for injuries at time arrested and records shall be kept from time of entrance or transfer to time discharged. Approved in principle. *Failed of passage.*

Assembly Int. 690, Pr. 701: Authorizes N. Y. City magistrates to order investigation of adolescent offenders including criminal, social, physical, mental and psychiatric history and to remand defendant or admit him to bail for not more than ten days pending receipt of report. Approved in principle. *Vetoed.*

Assembly Int. 2169, Pr. 2500: Permits state police supt. to maintain a scientific crime detection laboratory and to employ a director, number of corporals being increased from 11 to 13 and positions of saddler and blacksmith being stricken out. *Chapter 699.*

It is interesting to note that while some of approved bills failed to pass or were vetoed, all of the opposed bills met that fate. The Association's accomplishments must not be measured by affirmative action alone; perhaps it is even more useful in preventing hasty and unwise legislation. Moreover, the fact that the Association fails to get its measures through one year does not mean utter failure. It will come back again, always promoting useful statutory changes. As a watchdog in the legislative halls the Association per-

forms work of constant and enduring value to the people of the State.

Offenders and the Army—In the Jan.-Feb., 1941, issue of the Journal we presented a note "Criminals and the Draft" (31 J. Crim. L. 612) on the question of drafting probationers and parolees. This question has been solved to a certain extent by a change in the regulations governing the induction of men into the Army.

The new regulations make eligible for military service, men within the age limits of the Selective Service System who have been confined in local, State, and Federal penal and correctional institutions and offenders who have at some time been on probation or parole. Under the revised regulations, any registrant is excluded who:

(1) Has been dishonorably discharged from the Army, Navy, Marine Corps or Coast Guard or who has been discharged from any of these services because of undesirability or because of habits or traits of character;

(2) Has been convicted of certain heinous crimes (Treason, murder, rape, kidnapping, arson, sodomy, pandering, sex perversion, drug peddling or addiction);

(3) Has been convicted two or more times of any offense (except violation of the Selective Service Act) punishable by death or sentence of more than one year in a penitentiary or prison;

(4) Is a chronic offender with pronounced criminal tendencies and in addition has been convicted at least three times of an offense punishable by a jail sentence;

(5) Is on probation, parole, or conditional release, or under suspended sentence, so long as he "is being retained in the custody of any court of criminal jurisdiction or other civil authority";

(6) Is found otherwise to be morally, physically, or mentally unfit by the local registration board.

Bail by Rule of Court—In reading the Eighteenth Annual Report of the Baltimore Criminal Justice Commission, James M. Hepbron, Managing Director, we find that the Commission has been making a special study of bail bonds in Baltimore. In the summary of results of this study

reference was made to the "excellent and workable rules of the Supreme Bench of Baltimore City." They are worth reprinting if only to draw attention to the fact that *administration of criminal justice is easier through court rules than by statutes*. If the reader will compare the following rules with the laws covering bail found in his statute book he will agree that they are "excellent and workable."

"Unless otherwise ordered by the court in special cases, the following rules shall govern the Clerk of the Criminal Court in taking bail, viz:

"1. Property must not be accepted as bail in one case while pledged in another. It may be pledged in a sequence of cases, for offenses charged against the same traverser.

"2. Property, offered as bail, must be situate in Baltimore City and be valued, at the fee-simple value, last assessed by the tax assessors of the City of Baltimore or by the State Tax Commission for taxation purposes; the ground rent, on leasehold property offered as bail, shall be capitalized at six per cent, and deducted from such tax assessed fee-simple value.

"3. Property must not be accepted as bail if all liens and encumbrances thereon, save that of ground rent, exceed fifty per cent of the said tax assessed fee-simple value fixed under rule two, if leasehold, the ground rent thereon, capitalized at six per cent shall be deducted from such fee-simple value.

"4. The total value of unencumbered property offered as bail shall be fifty per cent more than the amount of bail required; if such property is encumbered, its value shall be seventy-five per cent more over and above such encumbrances. Such total value to be fixed under rules two and three.

"5. Forfeiture of bail may be stricken out, if the traverser be produced in court within thirty days from date of forfeiture.

"6. If traverser is not produced in court within said thirty days, and the amount of the bail as forfeited is not paid within sixty days from the date of forfeiture, the State's Attorney shall proceed at once to enforce payment of the amount due under the bail bond.

"7. Each person offering property as bail shall appear under oath and subscribe to all questions lawfully asked by the

court or clerk; which questions shall include the amount of the charge to be paid for furnishing bail.

"8. In accepting bail, the clerk shall consider the value of the property offered; and the character and previous conduct of the person offering it; may refuse to accept bail, for any reason based upon the value of the property; and character and conduct of the person offering.

"9. Bail shall not be taken from a person acting under a power of attorney or other written instrument; save in case of corporate surety, where the power of attorney, or written instrument, shall be filed and remain with the clerk.

"10. Bail shall not be taken from one violating any of these rules or who is in default under a bail bond; nor shall bail be taken from one whose brother, spouse or child is counsel or of counsel for a person to be released on bail.

"Nothing herein contained shall be construed to affect the civil liability of any principal or surety on any bond."

Defense Conference — A State-Wide Conference of law enforcement officers to discuss specific problems of civilian defense was called by Hon. Earl Warren, Attorney General of the State of California, at Sacramento, January 27 to February 6, 1941. In view of the fact the United States may soon become involved in the present world conflict the importance of conferences such as these cannot be underestimated. Lack of training of civilian forces aided greatly in the downfall of France and other European countries. This conference covered many angles of defense and was very wide in its scope. No law enforcement agency or business doing national defense work was overlooked. At this conference the State of California was divided into zones or regions in order that the law enforcement problems might be more easily coordinated and administered. The State Division of Criminal Identification and Investigation was selected to be used as a "clearing house" for all information on civilian defense. One hundred and thirty law enforcement officials were present, most of whom were chiefs of police of California cities. The Federal Bureau of Investigation and Army and Naval Intelligence forces were well represented;

also present were the heads of all communications systems.

A mimeographed book of one hundred pages, covering the proceedings, was published by the California State Department of Education. Included therein was a great amount of valuable information secured from specialists and experts in civilian life.

Among the many problems of civilian defense discussed and very ably covered were the following:

- Emergencies—Various Types
- Sabotage—Types
- Sabotage—By Flood
- Harbors—Sabotage of
- Electric Power—Sabotage of
- Highways—Problems in a Major Disaster
- Industrial Plant Protection
- Water Supply—Sabotage of
- Radio Communications—Problems in an Emergency
- Telephone Communications — Problems in an Emergency
- Fire Suppression—Rural Areas
- Bombing of a Community by Enemy Aircraft
- Civil Responsibility
- Types of Bombing
- Defense—Active and Passive
- Aircraft Warning Service
- Mission
- Plan of Organization
- Operating Procedure
- Communication System
- Information Center

Community Problems in an Air Raid

Emergency Police Problems—Here are taken up and discussed the many problems that faced London in its early raids. Plans were formulated for air raid shelters, air raid wardens, air raid alarm system, aid from American Red Cross, arsenal, "blackouts," boats, bombs and explosives, camouflage and decoys, casualties, communications, coordination, crowds, education of public, evacuation, fire plans, fire-arms, ammunition and explosives, first aid, emergency hospitals and rescue stations, hazards, identification, handling of infirm, sick and insane persons, jail facilities, study of local and state legislation pertaining to civilian defense problems, liquor control and looting.

Encouragement and assistance to local industries in surveying their plant facilities

ties and in providing adequate police protection.

Traffic plans—complete plans for the handling of traffic on the streets and highways during emergencies.

It was made very clear in this conference that this was a plan to aid local law enforcement and coordinate these activities with their own. California by this conference clearly indicate they lead the field in formulating plans for its protection in any and all emergencies. Every state in the Union would do well to follow. If war comes, civilian defense is indispensable; if war does not come the plans prepared are available for use in any case of major disaster.

J. I. H.

Central States Conference—On May 4th, the Central States Probation and Parole Conference held its annual session in Milwaukee, Wisconsin, with Mr. A. Ross Pascoe of Lansing, Michigan, as President, and Mr. William A. Mackey as Secretary. There were 279 delegates registered from nine states, composed chiefly of State Probation and Parole officers, and about 300 in attendance at the Pfister Hotel.

This conference was organized in Chicago in 1933 and has for its declared purpose, "An Association devoted to the advancement of progressive probation, prison and parole programs in the member states." The organization had its inception soon after Congress authorized interstate compacts which legalized the interchange of parole supervision. Previous to that time, there had been very little cooperation or coordination between the states in the administration of Probation and Parole. Since its organization, other sections of the country have organized similar inter-state conferences and understandings. The Southeastern Probation and Parole Conference met at Nashville, Tennessee, on almost the same date, calling together a large number of similar officials, and had on its program several officials from the United States Bureau of Prisons.

In point of practical importance, this conference has developed into an active exchange mart for the discussion of parole problems. While each year brings into the conference many delegates who have recently come into this field of service,

the discussions are highly profitable in that they hear many speakers of more mature knowledge and experience in the administration of parole. In the program of this three day conference, a wider use was made of panel discussions, participated in by delegates most familiar with the questions under discussion. The subjects ranged all the way from Juvenile Delinquency, its prevention and treatment, to the administration of prison camps.

An interesting panel discussion on Wednesday morning was on Community Responsibility and Cooperation, in the program of probation and parole supervision. There is increasing emphasis on higher standards in the employment of personnel and a development of systematic pre-investigation and good judgement in the suspension of court sentences and in the conditional release of prisoners under the indeterminate sentence.

Dr. Garrett Haynes, Director of the Department of Corrections of Michigan, called attention to the fact that it costs \$50.00 a year to supervise a man on probation or parole, whereas the cost of his maintenance in prison is from \$350.00 to \$400.00 a year, with less likelihood of his improvement or rehabilitation. Mr. Rodney Brandon, Director of the Illinois State Department of Public Welfare stated, "Those who attack the Illinois Parole and Probation system are believers in the theory of punishment. A criminal who is put in prison is paying a penalty to society for his crime." He added, "A man has never been bettered by paying his so called penalty." A prison is inhumane and unnatural."

Mrs. William E. Lewis of Chicago, Chairman of the Crime Prevention Division of the Illinois State Federation of Women's Clubs, read an excellent paper advocating the payment of fines in installments, instead of sending men and women misdemeanants to prison. "The present practice," she said, "Constitutes imprisonment for debt, which was abolished in England a century or more ago."

An outstanding address of the conference was given by Federal Judge F. Ryan Duffy, of Milwaukee. Judge Duffy has extended the privilege of probation to an exceptionally large per cent of Federal offenders who have come before him.

By a carefully selective process in the pre-sentence investigation, and careful supervision, the Judge has found probation to be a successful method in dealing with offenders. He said: "It is society's newer method designed to teach the offender the lesson of self-control and obedience to law, and at the same time to give each offender a better chance to rehabilitate himself as a peaceful and law-abiding citizen."

Mr. Arthur W. James of Washington, D. C., Supervisor of the Juvenile Division of the Federal Bureau of Prisons, as a guest speaker said: "Our body of knowledge regarding juvenile delinquency is rapidly increasing, and our methods of prevention begin to approach the status of scientific effort. Our methods of prevention and treatment, however, have not kept pace with the development of physical resources and the creation of new opportunities for delinquency treatment."

At the session relating to prison libraries, there was a special feature in the reading of three papers by high school pupils on the subject of "The Value of Probation and Parole in Relation to Crime Prevention." This was a contest project sponsored by the Milwaukee Crime Commission. Two hundred and fifty papers were written on the subject by high school pupils, and three prizes of \$25.00, \$15.00 and \$10.00 were given to the best three contestants.

It was disclosed at the conference that Wisconsin has abolished its historic State Board of Control, and organized a State Board of Public Welfare, with several divisions, including a Board of Parole and qualified probation and parole supervision under Civil Service.

The next meeting of the conference will be held in Louisville, Kentucky, next spring, with William A. Mackey of Columbus, Ohio, as President.

F. E. L.

Public Service Training—The College of the City of New York announced pre-service courses for candidates for the police and fire departments beginning 1941-42, with Dr. Robert Jahrling as Acting Director, Division of Public Service Training. This statement was made in the May, 1941, Bulletin:

"Because of the growing complexity of the responsibilities of government agencies and the growing need for the development of scientific techniques in solving community problems, the Board of Higher Education authorized in September, 1939, the organization of additional courses at the City College for those who wish to prepare themselves to enter the city's Police and Fire Departments, as well as for those who are already employed in other city departments.

"With the extension of civil service and the development of the concept of a career system in government service, more and more of the higher administrative posts in the city government are being filled by promotion from the ranks. It is therefore imperative to give to promising young men who wish to enter the municipal service a broad training that is both cultural and vocational in nature."

Upon completion of the course the College will grant a Certificate of Public Service and the Municipal Civil Service Commission has the right by law to grant preferential credit to those completing the course. An effort is being made to synchronize future examinations with City College graduation dates. The course for policemen is listed below:

FIRST TERM

<i>Courses</i>	<i>Credits</i>	<i>Hrs.</i>
English Composition	3	3
(Written and Oral)		
Hygiene	1	4
American History	3	3
Applied General		
Science	3	3
General Mathematics	3	3
American Govern-		
ment and Politics	3	3
	<u>16</u>	<u>19</u>

SECOND TERM

<i>Courses</i>	<i>Credits</i>	<i>Hrs.</i>
English Composition	3	3
(Written and Oral)		
Hygiene	1	4
Applied General		
Science	3	3
General Mathematics	3	3
Municipal Government		
and Administration	3	3
Principles of		
Economics	3	3
	<u>16</u>	<u>19</u>

THIRD TERM

<i>Courses</i>	<i>Credits</i>	<i>Hrs.</i>
English Composition	3	3
Hygiene	1	4
Urban Sociology and Current Events	2	2
Principles of Public Administration	4	4
Psychology (individ- ual and social)	3	3
Criminal Investigation	3	3
	<u>16</u>	<u>19</u>

FOURTH TERM

<i>Courses</i>	<i>Credits</i>	<i>Hrs.</i>
English Composition	3	3
Hygiene	1	4
Law	2	2
Principles of Police Administration	3	3
The Government and Administration of New York City	3	3
Field Service	4	4
	<u>16</u>	<u>19</u>

Assignment of Counsel—The Fifteenth Annual Report of the Kansas Judicial Council contained this interesting discussion of "Habeas Corpus Cases" and the cause therefor. The new statute on assignment of counsel is an important example of new procedural legislation.

"Within the last year there appears to have developed what might be termed an epidemic of habeas corpus cases filed by prisoners in the state penitentiary. More than 75 such cases have been filed in the district court of Leavenworth county, about 40 in the supreme court and nearly that many in the federal court for this district. . . .

"In this state our records disclose that slightly more than 80 percent of sentences are imposed upon pleas of guilty. Most of the petitions are by prisoners who entered pleas of guilty. They raise, among others, the contention that they were not represented by counsel, did not know their rights respecting having counsel, and were mistreated or tricked into entering pleas of guilty. Of all of such claims so far made in this state we have been unable to find even one case where they were supported. In fact, since this court removed a sheriff a few years ago for mistreating a prisoner in an effort to get a

confession, the court has heard of no well-grounded claim where that practice has been followed. We have discovered, however, that the records for commitment of prisoners are very imperfect in all too many instances. While our statute (G.S. 1935, 62-1304) relating to assignment of counsel appears to have been quite generally followed, and section 62-1516 provides for records to be made, it contains the provision that the omission to make the record shall not impair the validity of the judgment. From recent decisions of the supreme court of the United States it appears to be laid down as the rule that if one who has pleaded guilty, either in a federal or state court, thereafter, in a habeas corpus petition duly verified, alleges that he did not have counsel, or was denied counsel, or that he entered a plea because of a trick or duress, that he is entitled to a hearing upon such petition at which witnesses would be called to testify in person or by deposition before the court or a judge thereof; but if there is a record of the court contrary to the allegations of his petition he has a heavy burden of overcoming the record. If there is no such record, the best that can be done is to have conflicting testimony. Since some of these cases are filed ten years or more after the plea of guilty, and there have been changes in the office of county attorney, sheriff, and perhaps of judge, it becomes difficult—sometimes impossible—to get evidence to oppose that of the petitioner, even though it was ungrounded. Senator LeRoy Bradfield, executive and pardon clerk to the governor, the attorney general and the court, having had their attention called to this situation, drafted a bill to insure proper handling of those cases and the making of a proper record. This was introduced as Senate bill No. 360 and enacted into a law as drawn, except that the Legislature added to the latter part of section 1 a provision for the compensation of an attorney appointed to represent a defendant. This statute, if properly followed, as we are confident it will be, will enable the courts to reach more just conclusions in the class of habeas corpus cases above mentioned. The statute follows:

"Section 1. Section 62-1304 of the General Statutes of 1935 is hereby amended

so as to read: Sec. 62-1304. If any person about to be arraigned upon an indictment or information for any offense against the laws of this state be without counsel to conduct his defense, it shall be the duty of the court to inform him that he is entitled to counsel, and to give him an opportunity to employ counsel of his own choosing if he states that he is able and willing to do so. If he does ask to consult counsel of his own choosing, the court shall permit him to do so, if such counsel is within the territorial jurisdiction of the court. If he is not able and willing to employ counsel, and does not ask to consult counsel of his own choosing, the court shall appoint counsel to represent him, unless he states in writing that he does not want counsel to represent him and the court shall find that the appointment of counsel over his objection will not be to his advantage. A record of such proceeding shall be made by the court reporter, which shall be transcribed and reduced to writing by the reporter, who shall certify to the correctness of such transcript, and such transcript shall be filed and made a part of the files in the cause. The substance of the proceedings provided for herein shall be entered of record in the journal and shall be incorporated in the journal entry of trial and judgment. Counsel employed by or appointed for the accused shall have free access to him at reasonable hours for the purpose of conferring with him relative to the charge against him and advising him respecting his plea, and for the preparation of his defense, if a defense is to be made. It is the duty of an attorney appointed by the court to represent a defendant, without charge to defendant, to inform him fully of the offense charged against him and of the penalty therefor, confer with available witnesses, cause subpoenas to be issued for witnesses necessary or proper for defendant, and in all respects to fully and fairly represent him in the action. If after his appointment the attorney learns that the defendant, or his relatives or friends, are able and willing to employ counsel for defendant, he shall report those facts to the court and ask permission to withdraw from the case or to be permitted to accept compensation for his services. Whereupon the court shall make an appropriate order

with respect thereto. If an attorney so appointed shall not have been paid and shall have complied with all of the provisions of this section, he shall receive a fee of not to exceed ten dollars per day for his services. Such fee shall be approved by the trial judge and the same shall be paid from the general fund of the county in which the action was tried.

"Sec. 2. Section 62-1516 of the General Statutes of 1935 is hereby amended so as to read: Sec. 62-1516. When judgment is rendered, or sentence of imprisonment is imposed, upon a plea or verdict of guilty, a record thereof shall be made upon the journal of the court, which record among other things shall contain a statement of the offense charged, and under what statute; the plea or verdict and the judgment rendered or sentence imposed, and under what statute, and a statement that the defendant was duly represented by counsel, naming such counsel, or a statement that the defendant has stated in writing that he did not want counsel to represent him. If the sentence is increased because defendant previously has been convicted of crime the record shall contain a statement of each of such previous convictions, showing the date, in what court, of what offense and whether the same was a felony or a misdemeanor; also, a brief statement of the evidence relied upon by the court in finding such previous convictions and the facts pertaining thereto. Defendant shall not be required to furnish such evidence. It shall be the duty of the court personally to examine with care the entry prepared for the journal, or the journal when written up, and to sign the same and to certify to the correctness thereof.

"Sec. 3. The supreme court may make and amend from time to time such rules, consistent with statutes relating thereto, pertaining to criminal procedure in the supreme court and the inferior courts of the state, as it deems necessary."

"The amended sections were repealed and the act became effective on its publication in the official state paper, April 12, 1941."

Lawyers and Parole Procedure—John Gee Clark, Chairman of the California Board of Prison Terms and Paroles, told the lawyers of that State how to proceed in

parole matters in the May 1941, State Bar Journal. Lawyers are not permitted at the hearings but there are many ways in which the lawyer may cooperate with the parole board by rendering non-legal services. He stressed the value of written reports giving complete data concerning the client. He said:

"The lawyers are primarily interested in the length of the sentence and the terms of parole. Many factors enter into this determination and we will indicate the sort of information which the board desires and in what manner the attorneys may be helpful to the board in presenting such information.

"There are many points to be considered by the board in making its decision other than the character of the crime committed. The intelligence of the individual is important. Is he feeble-minded, or a moron, or of average or unusual intelligence? Where was he born? What is his race and family history? Who were his parents? What sort of people were they? Did they have a history of crime or incarceration in jails or mental hospitals or were they outstanding members of their community? What sort or record did the prisoner make in school and how far did he go? Did he conform to school discipline? Does he have a fixed abode or is he a roving individual whose home is where he hangs his hat? What is his work record? What skills has he, if any? Is he married, and if so, is his wife waiting for him? Incidentally the most important factor making for the success of a man released on parole is not the character of the crime which he has committed, but the fact that he has a good loyal wife awaiting his return. What is his age? What are his mental characteristics? Is he emotionally stable or is he psychopathic? What are his habits? Is he an alcoholic or given to dope or is he sober and temperate? Under what circumstances was the crime committed and what were the immediate causes of the commission of the crime?

"The future program of an inmate is also of interest to the board. The board desires to know if the man has employment offered to him and if so, its character and location. If he has no job on file, what are his prospects for obtaining work? Who are his friends outside willing

to help him obtain employment and readjust himself?

"We have listed these various questions at length in order that lawyers interested in parole matters may furnish this information to the board. Any particulars they may have concerning these matters is very helpful."

Dewey Speaks on Grand Jury—Addressing the Grand Jury Association of New York County in May, 1941, District Attorney Thomas E. Dewey said:

"Now the grand jurors have been talked about by a lot of people who say it is silly to have 23 men do one man's job. I have said most of this to you individually—and I want to repeat one aspect for your permanent recollection—do not let anybody tell you that the Grand Jury can be done away with and the prosecutor ought to take over the job. Judge Martin has told you—and remember for good—that nobody can take the place of the conscience of the community.

"Every time you hand down an indictment, you are sitting there not as rubber stamps for a District Attorney, not as people who read the law and apply it rigidly, but as people who say, 'We live in this city, we know its problems and we are going to hand down indictments in accordance with the necessities of modern life, and last and always and most important we are going to see that no District Attorney, no irresponsible assistant, no cop seeking revenge, no judge, if you will, can charge or get us into a situation where even a subpoena which can destroy the good name of a man is issued or an indictment handed down unless we know that it is not being done for political purposes, for revenge, for satisfying a private grudge or is contrary to the conscience of the community.' That job you can do, and no one man, no district attorney or judge can take that job from you. I ask you to remember permanently that everybody who wants to abolish or limit the powers of the Grand Jury must have an axe to grind; either that or he's too wet behind the ears to know what is going on in this society of ours."

Prisoners Discharged—The Bureau of the Census has compiled a bulletin of tables showing the data of discharged prisoners

in state and federal prisons for the year 1939. The fact that nearly all prisoners who serve time in prisons and reformatories are returned to free society is clearly

shown in the table which follows. Of the 68,652 prisoners discharged, 128 were executed, 962 died in prison and the remainder, 98.4% were released.

PRISONERS DISCHARGED, BY TYPE OF COMMITMENT AND SEX, BY METHOD OF DISCHARGE: 1939

Method of Discharge	Prisoners Discharged			Felony Commitments			Misdemeanor Commitments		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total	68,652	65,216	3,436	64,311	61,783	2,528	4,341	3,433	908
Unconditional release	27,134	25,998	1,136	23,688	22,883	805	3,446	3,115	331
Expiration of sentence.....	26,633	25,511	1,122	23,189	22,397	792	3,444	3,114	330
Pardon	170	164	6	168	163	5	2	1	1
Commutation	331	323	8	331	323	8	—	—	—
Conditional release	40,428	38,157	2,271	39,544	37,848	1,696	884	309	575
Parole	27,942	26,198	1,744	27,127	25,904	1,223	815	294	521
Conditional pardon	1,662	1,610	52	1,661	1,609	52	1	1	—
Other conditional release..	10,824	10,349	475	10,756	10,335	421	68	14	54
Executed	128	128	—	128	128	—	—	—	—
Deaths	962	933	29	951	924	27	11	9	2
Percentage distribution	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Unconditional release	39.5	39.9	33.1	36.8	37.0	31.8	79.4	90.7	36.5
Expiration of sentence....	38.8	39.1	32.7	36.1	36.3	31.3	79.3	90.7	36.3
Pardon and commutation..	0.7	0.7	0.4	0.8	0.8	0.5	(1)	(1)	0.1
Conditional release	58.9	58.5	66.1	61.5	61.3	67.1	20.4	9.0	63.3
Parole	40.7	40.2	50.8	42.2	41.9	48.4	18.8	8.6	57.4
Conditional pardon	2.4	2.5	1.5	2.6	2.6	2.1	(1)	(1)	—
Other conditional release..	15.8	15.9	13.8	16.7	16.7	16.7	1.6	0.4	5.9
Execution and deaths.....	1.6	1.6	0.8	1.7	1.7	1.1	0.3	0.3	0.2

¹ Less than one-tenth of 1 percent.

EDITORIAL CHANGE

For seven years Fred E. Inbau has edited the Police Science Section of the Journal. In this work Mr. Inbau was able to bring to bear a unique training in both law and scientific crime detection. He developed a specialty in the field of evidence which might be called "scientific evidence," and through his own articles and the articles obtained by him this Section of the Journal became noted throughout the country. But in July this year Mr. Inbau decided to leave his position of Director of the Scientific Crime Detection Laboratory, now an integral part of the Chicago Police Department. He desired to devote all of his time to the other part of his specialty—the law.

He made a connection with a firm of Chicago lawyers and is now engaged in the practice of law in this city. Mr. Inbau thought it wise to give up his work as active Editor of the Police Science Section. Nevertheless, he was willing to remain on the Editorial Board in an advisory capacity. The Editors of the Journal appreciate the fine service which Mr. Inbau has rendered and wish him success in his new venture.

As a successor to Mr. Inbau the Journal is fortunate in having a member of Mr. Inbau's staff at the Scientific Crime Detection Laboratory, Mr. Ordway Hilton. Mr. Hilton is well qualified in both training and experience to continue this Section and maintain the standards set by Mr. Inbau.