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Current Notes

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CURRENT NOTES

V. A. Leonard, Editor

An Appraisal of the Indeterminate Sentence—The widespread acceptance of the indeterminate sentence indicates, according to the written material, great unanimity of opinion. Yet almost half the states still use the definite sentence, and several states have abandoned the indeterminate sentence to return to the definite sentence system. Advocacy of the indeterminate system is allegedly based on the flexibility of such a sentence and the framework it provides for individualized treatment. Earlier advocates of the indeterminate sentence, however, were more concerned with lengthening the period of incarceration for “hardened” criminals than with shortening the time for others. Has this viewpoint persisted *in practice*? The reasons given today for support of the indeterminate sentence are: a. it facilitates parole; b. it provides more adequate protection to the public against the habitual criminal, while at the same time it enlarges opportunities for early release of others; c. a court does not have sufficient data to fix a definite sentence, and cannot have, since it is impossible to foretell the future course of human behavior. Replies such as these are made: a. parole operates just as well under a definite sentence system; b. the supposed protection against serious offenders is not confirmed; c. as to the argument that a sentencing judge is not in a position to foresee the future behavior of the offender and therefore cannot fix the sentence, the reply is that under the indeterminate sentence system the judge still fixes the maximum, and where he does not, the statute does.

An examination of the United States Census Bureau data on the length of commitments under both definite sentence and indeterminate systems reveals that in practice the latter results in keeping a substantially greater proportion of men in prison for long terms than the definite sentence system. Such evidence requires re-examination of the generally accepted proposition that the indeterminate sentence is a more desirable form of sentencing than the definite sentence, from the point of view of rehabilitation of the prisoner. The suggested merit of the indeterminate sentence plan is that it provides greater flexibility in releasing prisoners when they can benefit from parole, and should shorten sentences generally. This may be scrutinized to advantage in states with the best parole organizations. The outstanding parole boards are in general those with full time paid members of three or more. There are 14 such states evenly divided. Seven are definite sentence states (Alabama, Florida, Georgia, Michigan, Missouri, Texas and Virginia) and 7 are indeterminate sentence states (California, Iowa, Massachusetts, New York, Ohio, Pennsylvania and Washington). States in the latter group sentence for long terms predominantly, and the definite sentence states for short terms predominantly. That is, the predominance of long over short terms in the indeterminate sentence states as compared with the ratio in the definite sentence states, exists among the better parole systems just as it does generally.

In many cases the indeterminate system keeps men in prison for long terms, apparently not on the basis of their individual needs but because of the type of sentencing system used. Although the indeterminate system may become flexible in connection with parole, many prisoners

sentenced to indeterminate terms nevertheless serve out their full term of imprisonment. One out of five indeterminate sentence prisoners in 1945, according to the census, served to the end of their terms, in contrast with short terms (under 5 years) imposed almost without exception in the definite sentence states. Hence, until a sound system of individualization in sentencing is established and coordinated with a sound parole system, it is believed that, by and large, the indeterminate sentence is a handicap to reformation of offenders rather than a help.—Sol Rubin, Legal Consultant, National Probation and Parole Association. *The Indeterminate Sentence—Success or Failure?* Focus, March, 1949.

The Emotional Climate of the Exceptional Child—Throughout the world, there is increasing concern over the preservation of mental health. In this country, the passage of the National Mental Health Act is, in itself, significant of public recognition of the need for providing appropriate study and care. The influences of the family, the school and the community on the sound emotional development of the normal child have long been recognized. Believing that too little emphasis has been placed on these factors in relation to the growth of the exceptional child, the Woods Schools Child Research Clinic selected for the subject of its 1949 Spring Conference, *The Emotional Climate of the Exceptional Child*. The Conference was held in collaboration with the Department of Psychiatry and Neurology of The Medical College of Virginia and the Virginia State Department of Mental Hygiene and Hospitals, Friday, April 22, at the John Marshall Hotel, Richmond, Virginia. As in the past, the Child Research Clinic of the Woods Schools, Langhorne, Pa., under whose auspices these Conferences are organized and conducted, will publish the papers delivered at this meeting. Copies of the proceedings of the annual Conferences, as well as a series of pamphlets dealing with specific problems of the exceptional child, are obtainable from Charlotte E. Grave, Ph.D., Director of the Child Research Clinic.—*From a printed announcement.*

The Legal Aid Society of New York Expands Program—The Society's seventy-second year is reported as a fruitful one. It not only increased its regular services to poor clients but it was able to expand its work into the United States District Court for the Southern District. With increased support, it is planned to extend the program into still other courts. During the year the Society learned that it would receive a most generous legacy under the will of William Nelson Cromwell, whose partner, Eustace Seligman, has for many years been its distinguished treasurer. The Society was also honored to be a beneficiary under the will of the late Chief Justice and its former President, Charles Evans Hughes. As a result of increased support, the staff has had an opportunity to be of service to a larger number of poor people. In the Civil Branch in 1948 there were 34,751 applicants for help as compared to 31,462 in 1947. The Criminal Branch represented 8,288 persons accused of crime in 1948 as compared to 8,160 in 1947. The Society continues to receive the invaluable help of volunteer services, chiefly from lawyers in the Criminal Branch. Most of these volunteers are contributed by the law firms who so generously support the work, but others are individual contributions. The Civil Branch also received competent voluntary assistance. Mrs. Josephine Nicoll Burke, a graduate of the Columbia

Law School, and Mr. Irving Reynolds have been of great help. Miss Kelley and her able associates in the Criminal Branch processed in a most able manner the total of 8,288 cases which represented about the maximum of possible assignments in the Criminal Courts Building. Recognition of their splendid service prompted continuing requests by the Chief Magistrate of the City of New York and the presiding justices of the Special Sessions Court to expand the service to some of the other Boroughs of the City.—*Seventy-third Annual Report of The Legal Aid Society (11 Park Place, New York) for the year 1948*, submitted by Whitney North Seymour, *President*.

Economic Status and Criminality (Foreign)—Criminal science has not concerned itself too much with the relationship between criminality and economic status. More stress has been laid upon the criminal aetiology of general economic conditions and of the social economic structure. Conclusions as to the criminogenic significance of individual poverty were largely drawn from these factors. Out of the official criminal statistics only the data of a few countries give information regarding the individual financial situation of criminals. Thus for instance in Hungary between the years 1923 and 1937 (at a time when the effects of two World Wars were not decisive factors in the development of criminality) the distribution of sentenced offenders from the viewpoint of their financial situation was as follows: Wealthy persons amounted in the average to 6 per cent of those sentenced. This figure was the highest in the years 1924 and 1925 with 8.3 per cent; the lowest was 3.6 per cent in 1934. Those having some fortune accounted for 9.9 per cent; this figure was the highest in the year 1927—10.8 per cent, and the lowest in 1929 and 1930—9.4 per cent. Those having no means represented an average of 84.1 per cent of the total, reaching a peak in 1935 with 86.6 per cent and in 1926 with a low of 81.3 per cent. The data available give the impression that in the society of criminals, poor people are in the overwhelming majority. It appears certain that poverty often motivates criminality both in a positive and in a negative direction. In a positive manner, it sets free the desires which, in order to procure the goods of wealth, easily resort to illegal means. In a negative direction, poverty creates the lack of powers to withstand criminality, such as health, education, culture, etc. Individual poverty is, however, interwoven with other factors to such an extent that it is doubtful whether it may be regarded as a direct causative factor in delinquency. It remains, therefore, to explain why criminal statistics reveal such a minute proportion of wealthy people and such an overwhelming proportion of the poor.

Occupational status appears to offer a helpful approach to the problem. Studies permit the conclusion that the overwhelming majority of persons sentenced was composed not only of the poor but generally speaking of people in the lower social strata. It is possible to conclude that not only the wealthy do not appear in criminal statistics but generally speaking those who are at or near the apex of social power. Those in possession of means and of social power are, through their financial situation and social position, able to conceal a substantial part of their criminality. This is the delinquency which is missing from the statistics. This is why visible criminality shows such a large proportion of people from the socially lower strata. Those who commit crimes from

behind the bastions of their economic or social power are the white collar criminals. The decisive element of white collar criminality is, therefore, the use of economic or social power or authority as the means. White collar criminality is so important that it deserves serious consideration and should be adequately represented in the total statistical picture of the crime problem.—*Excerpts from an abstract of the original of a book, The White Collar Criminal, by Dr. Stephen Schafer, Barrister-at-Law and Lecturer on Criminology at the University of Budapest, published in 1948 by the Institute of Criminal Law, University of Budapest.*

Pennsylvania Surveys Its Probation Service—Offering one of the most comprehensive studies of its kind, a survey of Probation Service in Pennsylvania has just been completed by the Pennsylvania Committee on Penal Affairs of the Public Charities Association at the request of the Pennsylvania Association on Probation and Parole. This survey, the first of its kind in Pennsylvania, includes an analysis of the appointment and selection of probation officers, the number of officers in the various jurisdictions, their general duties, salaries received, tenure and length of service, case loads, resources for training on the job and general probation problems. There is a wide range of recommendations in the body of the report, which reveals that Pennsylvania has 421 probation officers: 225 men and 126 women. While Pennsylvania has a widely distributed probation service, there is proportionately a heavy concentration in the two metropolitan areas of Philadelphia and Allegheny Counties. The majority of the probation officers, 272, are attached to the courts of these two counties. There are only 149 full-time salaried probation officers, 86 men, 63 women, in the 45 up-state counties of the state. The 20 remaining counties have no probation service or use part-time service. The total expenditure of salaries for full-time probation officers in 1948 amounted to \$1,145,097. The salaries of chief probation officers are lower in the large cities of Pennsylvania than in the large cities of other states. Fifty per cent of the staff probation officers receive less than \$2,500 per annum. The average salary of staff officers is \$2,571.

The probation officers of the state carry case loads far in excess of standard case loads required for effective individual work with men, women and children. In many jurisdictions, there are not enough probation officers to carry the case load with the result that these officers of the courts stagger under heavy work programs. Adequate work cannot be done when this sort of coverage is required. According to the report, the optimum case loads should be 60 to 70 cases for adults, 50 cases for boy juveniles, with perhaps only 40 for girls. To attract probation officers to the work as a career service, a number of courts have developed systems of appointment based on qualifications. This method of appointment, the report states, has been found practical in probation departments, large and small, and should be extended. Provision is also made for regular increase in salaries lacking in most of the courts and retirement on age after a certain period of years of service. Tenure and security are important factors to which the judges and county authorities should give thought.

Hundreds of probation officers of the state have taken advantage of the in-service training opportunities offered by the Public Service Institute of the State Department of Public Instruction with the result that a large number of them have taken this training, including basic,

advanced and special advanced courses. The Pennsylvania Association on Probation and Parole has supported these courses and sponsored sessions conducted by the Public Service Institute. The report recommends probation service for every county in the state, especially for the delicate problems dealing with juveniles and youths. It is suggested that some method be developed by which counties without probation service be provided with this important facility. Joint financing of at least part-time probation service by two or more counties wherever necessary is recommended.—*Probation Service in Pennsylvania, An Analysis of Its Extent; Salaries; Case Loads; Appointment and Selection of Probation Officers; Tenure; Retirement; Training on the Job.* Copies may be obtained (price 25¢) by addressing Leon T. Stern, Secretary, Pennsylvania Committee on Penal Affairs of the Public Charities Association, 311 S. Juniper Street, Philadelphia 7, Pennsylvania.

Integration of State Agencies in the Supervision of Delinquents—Not all of the work of a juvenile parole agent is personal counseling with the ward; with his parents, real or foster; with his teachers; or public officials. Helping a boy or his family secure certain services that he, the agent, cannot supply is common to most every case. Typical of some of the work with other divisions and departments of state government are items contained in a recent annual report of the Illinois Division of Supervision of Delinquents. The Division continues to have frequent contacts with the Division of Child Welfare and the Division for Delinquency Prevention. In addition, where wards of this Division were involved, either in social or family relations, with wards of the Division for Rehabilitation of Women and Girls, the two Divisions worked together on common problems. The facilities of the Institute for Juvenile Research have been used for further clinical study of boys on parole. The special surgical service of the mental hospitals has been used to correct physical handicaps of some parolees. The Illinois Eye and Ear Infirmary has continued to work cooperatively with the Division. The out-patient department of the Illinois Neuropsychiatric Institute has carried on psychotherapy with a few parolees referred by this Division. Others have been hospitalized for observation and diagnosis for possible surgery or other treatment. The increasing incidence of diagnosed epilepsy and epileptoid symptoms among parolees has accounted for the latter. In addition, the University of Illinois Research Hospital has been of assistance in rendering general medical and surgical aid. In cooperation with the University's Division of Services for Crippled Children, the Division is in the process of securing follow-up services for the correction of otological defects on twenty-eight special cases. In many other ways, the resources of state agencies are pooled and utilized through the program of the Division.—*A Review of Certain Phases of the Seven-Year Experience of the Division of Supervision of Delinquents*, by Harvey Long, Superintendent of the Division, Illinois Department of Public Welfare (Annual Report).

Treatment of Epilepsy—New drugs, not yet generally available to the medical profession have been used with some success in the treatment of epilepsy, Dr. Benjamin Boshes, assistant professor of nervous and mental diseases at Northwestern University stated in addressing a Post-Graduate Conference for Physicians in February at Peoria State Hos-

pital. The conference was sponsored jointly by the State Public Welfare and Public Health Departments and the Peoria County Medical Society. Several hundred Illinois physicians variously representative of the two state Departments and of private practice as well, attended. In his talk on *The Medical Management of Epilepsy*, Dr. Boshes said that results from the use of new drugs experimentally in epileptic cases offers "some hope" that they may do away with many treatment problems heretofore difficult or impossible to solve.—*The Welfare Bulletin*, The Illinois Department of Public Welfare, March, 1949.

The Nation's Sheriffs—Five hundred fifty or one-sixth of all the nation's sheriffs have changed as a result of the November elections, due largely to considerations (in the main political) extraneous to efficiency in the conduct of this public office. Of particular importance is the fact that of this number, 419, will be in sole charge of jails already condemned or "restricted" by the Jail Inspection Service of the United States Bureau of Prisons. This means literally that these 419 new sheriffs will inherit jails officially blacklisted as unfit for human habitation. The American Prison Association and the National Jail Association offer their full cooperation to sheriffs concerned with improving their jails. Without obligation, they solicit the inquiries of sheriffs who seriously take to heart the mandate of their people for improved conditions in their localities.—*The Prison World*, January-February 1949.

Housing and Behavior Patterns—Some research has been done in various parts of the U. S., to determine the relationship between delinquency and poor housing. An addition to previous data is a study made by Howard Harlan and Jack Wherry of Birmingham-Southern College, which is reported in *Social Forces*, published by the University of North Carolina Press. Fifteen measures of housing conditions in Birmingham's fifty-two census tracts in 1940 were correlated with delinquency rates in those tracts for that year. Sifting the findings, the authors report that they were able to establish four general principles: a. that delinquency rates tend to be higher in areas of high population density; b. that delinquency rates tend to be higher in areas where the economic value of the housing (as represented by rentals) is low; c. that areas where the physical condition and equipment of the houses are poor are areas of higher delinquency rates; and d. that areas characterized by high rates of tenancy are also areas of high rates of delinquency. "In short," the report states, "if high population density, low economic value of houses, physical deterioration and lack of necessary equipment, and high rate of tenancy can be evaluated as indicators of poor housing, the findings of this investigation present objective confirmation of the general principle that *poor* housing tends to be associated with *high* rates of delinquency, and vice versa."—*Focus*, March 1949.