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Abstracts and Notes

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ABSTRACTS AND NOTES

PILOT SENTENCING INSTITUTE

In August 1958 the Congress of the United States enacted a law which authorized the Judicial Conference of the United States, with the assistance of the Department of Justice, to sponsor joint councils and institutes on sentencing from time to time. The law stipulated that at these institutes groups of federal judges would discuss and work out some consensus as to the principles which should guide the courts in sentencing convicted federal offenders. Also provided in the law were several additional sentencing alternatives for the courts, including a discretionary method of indeterminate sentencing. Behind the enactment of this law of course lay the current concern of the Congress, the judiciary, the bar, and other groups associated with the administration of justice, over the prevalence of wide disparities in the sentences imposed upon defendants with like backgrounds, characteristics, and offenses.

A committee composed of representatives of the federal judiciary, the Department of Justice, and the Administrative Office of the U. S. Courts, set about collecting the data and developing the agenda that would be needed, and arranged to convene a pilot institute at which the form of future institutes under the law could be developed. With 60 judges drawn from federal districts throughout the United States, the pilot institute was held on July 16 and 17 on the University of Colorado campus in conjunction with and immediately following the Protracted Case Seminar. Judge Alfred P. Murrah of the Tenth Circuit Court of Appeals presided ably over the entire week's proceedings and Judge William J. Campbell of the Northern District of Illinois served as the affable chairman of the sentencing institute. The university setting, with its backdrop of tall, rugged mountains, contributed greatly to the congenial tone of the institute.

In his opening remarks Judge Campbell introduced some of the notables present, including Representative Edwin E. Willis of Louisiana, chairman of the House Judiciary Committee's subcommittee which had framed the final version of the new sentencing law. The Congressman reported to the audience of judges that the

Congress was vitally interested in bringing about a greater degree of consistency in the sentences imposed upon the offenders convicted in our federal courts. The Honorable Lawrence E. Walsh, Deputy Attorney General of the United States and a former federal judge, then expressed the doubts and soul-searching that he had experienced in sentencing defendants. He commented also:

"In a society which is as fluid and changing as ours, with legislative acts shifting with the turn of events and the culture taking on different colors with the coming and going of fads, fashions, and modes, the abstract concept of justice is one of the few values that remains intact . . . Perhaps it is because so much is changing about us that we have come to value justice more highly than ever. I think it is no accident that, after virtually generations of expressions concerning the inconsistent fate of those convicted of crimes, the Congress should have passed a law strongly suggesting that the courts make a concerted attempt to develop consistency."

The Deputy Attorney General was followed by the Honorable Warren Olney III, distinguished Director of the Administrative Office of the United States Courts, who described for the institute participants the full nature and extent of the disparity problem. In his turn, Executive Assistant Roger G. Connor of the Department of Justice's Criminal Division, summarized the development of the laws presently affecting federal sentencing and pointed out, "In terms of their over-all effect, our sentencing laws are a grant to judges of an individual discretion greater than is known to any other legal system in the world."

In order to explore the problems of sentencing more concretely, the institute then took up panel discussions of three types of offenders, the income tax violator, the automobile thief, and the fraudulent offender. Judge George H. Boldt of Tacoma, Washington, armed with attractive charts, graphically described this offense as one most subject to inconsistent sentencing and asserted that an appropriate sentence involved an analysis of the law violated and the implications of the violation, an analysis of the specific offense, and an analysis

of the offender himself. His three colleagues on the panel divided income tax offenses into three broad types—violations related to other crimes, violations unrelated to other crimes, and misdemeanors—and offered their views on the sentencing of each type.

Judge Randolph H. Weber of the Eastern District of Missouri reminded the judges that the background of the offender was one of the major factors to be taken into consideration in imposing sentence, but that the mild nature of the sentences imposed on racketeers and similar income tax violators engaged in other illicit activities did not reflect this consideration. In taking up the run-of-the-mill tax offender who is prosecuted as an "example" to other potential violators, Judge John W. McIlvaine of Pennsylvania's Western District suggested that the small number of persons sentenced for income tax violations (about 600 out of 70 million returns) actually had little deterrent effect and that perhaps a more desirable degree of deterrence could be brought about by equipping the Internal Revenue Service with enough auditors to guarantee that all such violations were detected. Judge Edward Thaxter Gignoux of Maine, in discussing the misdemeanor cases, questioned whether it was necessary to send them all to jail in order to fulfill the purposes of deterrence, pointing out that the defendant had already been severely penalized in several ways and that incarceration might mean the destruction of an otherwise reputable defendant and his family.

Judge Walter E. Hoffman of the Eastern District of Virginia, discussion leader of the auto thief panel, described the characteristics of this offender, perhaps the most consistently unstable of all types, and said that the most urgent question in sentencing him was the kind of treatment he needed. Of all the sentencing alternatives available for the disposition of this type of offender—Youth Act, regular adult procedures, or probation—Judge Luther W. Youngdahl in his talk voiced his preference for Youth Act commitment when probation was not otherwise indicated. In sentencing the adult Dyer Act violator, Judge Edward T. Devitt of Minnesota felt that all the information available to the court concerning the defendant was helpful in setting the maximum term, but that since neither the judge nor anyone else could predict the future, the indeterminate provisions of the new sentencing law should be

applied in reference to the minimum, leaving the matter of parole eligibility entirely up to the Parole Board.

At this point in the agenda, another panel presented talks on the various resources available to the court in making disposition of the offender. The discussion leader, Chief Judge Louis E. Goodman of the Northern District of California, outlined the various reports and records made available to the court and stressed the importance and scope of the probation officer's pre-sentence report. Louis J. Sharp, Chief of the Division of Probation, described the manner in which probation officers went about their task of supervising parolees and probationers and cited some illustrative cases. Federal Bureau of Prisons Director James V. Bennett related the intensive study and effort that went into an evaluation of defendants committed to his agency under the diagnostic procedure of the new sentencing act. He issued a standing invitation to the judges to visit any of the federal institutions at any time to see for themselves what their resources and practices were. Chairman George J. Reed of the U. S. Board of Parole concluded this panel discussion by briefing the judges on the procedures the Board has set up for determining parole eligibility under the new sentencing law.

In opening the panel discussion on the fraudulent offender, Judge Irving Kaufman of the Southern District of New York recited the difficulties in sentencing this group of offenders, composed of perhaps the broadest range of offenses. The validity of the judge's prescription, he said, depended primarily upon the accuracy of the judge's diagnosis and his ability to predict the effects of certain types of treatment upon certain defendants. If the judge erred in assessing either of these elements, his sentence would fail to fit the circumstances of the case. Judge James M. Carter of California's Southern District summarized the complex procedural difficulties in the cases of defendants whose fraudulent offenses had violated both federal and state law. In weighing the sentence to be imposed, Judge Carter said he gave chief emphasis to a consideration of what type of sentence would be most useful in making the defendant a useful, law-abiding and self-supporting member of society. He said that he cannot believe that the judge's function is merely that of acting as society's avenger. In discussing whether the fraudulent offender should be sentenced to probation

or prison, Chief Judge Rozzel C. Thomsen of Maryland again cited the extremely varied character of both the offenses and offenders in this group, and re-emphasized the importance of an individual analysis of both the offense and the offender in determining the sentence.

Following each panel presentation the judicial audience discussed the problems and questions that had been posed by the panel. It became apparent that the institute had little time in which to discuss these many complex matters fully and also that there existed among the judges broad areas of disagreement. However, it was conceded by the participants that this in itself was one very tangible and valuable product of the institute.

With the areas of disagreement identified, the next institutes can be planned to deal specifically with them.

The committee that arranged the pilot institute is presently engaged in collecting the comments and suggestions of the participating judges. After these have been studied and evaluated by the committee, it is anticipated that at least one more institute with a nationwide representation will be conducted. The new law contemplates that the eventual sentencing institute program will be conducted in conjunction with circuit conferences.—Communicated by James V. Bennett, Director, U. S. Bureau of Prisons.

A QUARTER CENTURY OF CRIMINAL JUSTICE IN IOWA

Analysis of 108,195 Criminal Court Cases, 1935-'58, and An Enquiry into the Penal Policy of the Courts.—By Walter A. Lunden, Iowa State University, Chairman, Governor's Committee on Penal Affairs.

This monograph, prepared for the Governor's Committee on Penal Affairs in Iowa and the Iowa Correction Congress held in September, 1959, is described by its sub-title. It depicts, both by tables and graphs, the rise in Iowa's crime during the years under review, the percentage of convictions, dismissals and acquittals, and the disposition of criminal cases. It does not give a breakdown on the types of crime committed or the background of offenders.

For the past quarter century, Iowa has been faced with an increasing number of criminal cases involving a burdensome tax budget. The number of criminal cases in district courts rose from 4261 in 1935 to 6151 in 1958, an increase of 44.3 percent. The steady rise during this era was broken only by the years of World War II. That this increase cannot be attributed solely to population increase is shown by the fact that during the period 1920-1956 the state's population increased by less than 10 percent. Lunden notes that "the 'abundance' of the present decades may play an important part in the present increase in criminal litigation." (p. 4). The pamphlet gives no other statement of possible causal elements in this crime trend.

The percentage of criminal convictions has varied from a high of 86.8 percent in 1948 to a low of 72.5 in 1935. Similarly, dismissals and acquittals were highest in 1935 (27.5 percent) and 1943 (26.2

percent). The ratio of non-convictions is related to the nature of the cases in court and the social conditions.

During the last three years covered by the study, about 95 percent of all criminal cases were adjudicated without trial, which may be partly attributed to the fact that a high proportion of defendants plead guilty in court rather than stand trial.

The study reveals marked variations in disposition of cases over the twenty-four years, with a tendency toward the greater use of jail and/or fines in the last half of the period. Only 41.2 percent of the 1935 cases resulted in fines and/or jail sentences, but the 1950 figure comprised 68 percent of all dispositions. On the other hand, there was a decrease in imprisonments from 1935 (22 percent) to 1953 (10.8 percent). Similarly, Bench Parole and Suspended Sentences declined in the past fifteen years compared with the 1935-1942 period; they fell from 14.5 percent in 1938 to 5 percent in 1956. Lunden suggests that this infrequent use of Bench Parole and Suspended Sentence may be related to the fact that Iowa has no adult probation system.

Dismissals declined since 1943, while the proportion of acquittals has remained relatively constant at about 2 percent, with variations from 5.7 percent in 1936 to 1.9 in 1958. The yearly figures and total trends on disposition of cases over the period are depicted in four charts and tables.

The last section of the pamphlet enquires into the penal policy of the courts. Lunden raises such questions as, why does a court condemn or sentence an offender? Why does it administer punishment?

He conceives of the court as "but the objectification of the long time thinking or ethical impulses of a people or a community." (p. 13). The court's penal policy is essentially the expression of popular sanction, approval and disapproval. As for the theory of punishment in the background, the typical community tendency is to act first before seeking a reason for action. The judge in pronouncing sentence is in effect striking back at a person who has disturbed the emotional and ethical sense of a people, but this does not imply that the community knows why it punishes. Penal policy, says Lunden, is at a cross-road.

The history of jurisprudence shows a heavy reliance upon the theory of "retribution" or "retaliation" in which crime as an act of aggression is met with the counter-aggression of punishment, together with the concepts of deterrence and containment, as contrasted with the modern view of humanitarian rehabilitation. Whether the general public will accept the rehabilitation theory as an effective substitute for punishment, and to what extent, remains problematical. Is friendly moral persuasion too ideal for our fragmented society with its reality of serious crime? Can the judgment of long community experience be disregarded without danger? Lunden cites the restoration of capital punishment in Iowa (1878) as an example of the effect of changing community sentiment on punishment, and concludes that the future of rehabilitation depends on how much criminality a society will tolerate; but there appear to be societal limits and barriers to rehabilitative programs, and "the most advanced ideas in rehabilitation have not dared to break with tradition based on retaliation." (p. 17).

The statistical data in this study will be of interest to students of crime who may wish to compare the situation in Iowa with that in other states on trends and case dispositions. The section dealing with court penal policy is not directly related to Iowa, other than noting the trend toward increasing use of fines and/or jail sentences; it consists of observations applicable to crime and punishment generally. It is a brief judicious statement of the practical problems of resistance to any extension of the rehabilitation philosophy, and a reminder to social reformers of Hoffding's insight that the ethically ideal must be sociologically possible.—John E. Owen, Wisconsin State College, Superior, Wis.

Compensation of Victims of Criminal Violence—Serious consideration is being given in England to a proposal that there be established a limited system of governmental compensation for victims of criminal violence. The advantages, disadvantages, and practical difficulties regarding such a program are discussed in a symposium published in the Spring, 1959 number of the *JOURNAL OF PUBLIC LAW*. The writers who contributed articles upon the subject are: Margery Fry of England, who conceived the idea while working with the Howard League of Penal Reform in London; Glanville Williams of Cambridge University; I. L. Montrose of Queens University, Belfast, Ireland; Fred E. Inbau, of Northwestern University; Frank W. Miller of Washington University; Henry Weihofen of the University of New Mexico; Gerhard O. W. Mueller of New York University; and Helen Silving of the University of Puerto Rico. Copies of the *JOURNAL OF PUBLIC LAW* may be obtained at a cost of \$1.50 each from Emory University, Atlanta 22, Georgia.

International Congress of Criminology—The Fourth International Congress of Criminology will be held at The Hague during September 5-12, 1960. Complete information can be obtained from the Secretary-General, Ernest Lamers at 14 Burgemeester de Monchyplein, The Hague, Netherlands.

Four plenary sessions will be held as follows:

Mental Medicine and Criminal Procedure—Dr. Zilboorg (U.S.A.);

Criminal Law and Mentally Abnormal Delinquents—Professor Mannheim (United Kingdom.);

Criminal Data on Mentally Abnormal Delinquents—Professor de Greef (Belgium);

Integration of Criminal Data on Mentally Abnormal Delinquents—Professor van Bemmelen (The Netherlands).

SECTIONS AND GENERAL RAPORTEURS

1—Prognosis and Treatment. Chairman: Cornhill (Belgium).

General Rapporteurs: Medico-psychological methods, Deniker (France); Sociological methods, Christiansen (Denmark); Legal medicine and

scientific policy, Thelin (Switzerland); Penology. Marnell (Sweden).

2—Special Themes. Chairman: Ribeiro (Brazil).

General Rapporteurs: Epilepsy, xxx; Sexual delinquency, Tappan (U.S.A.); Theft in department stores, Gibbens (U.K.); Age and mental abnormality, xxx;

3—Scientific Research. Chairman: Pompe (The Netherlands)

General Rapporteurs: What is the actual status of research with regard to the personality of the mentally abnormal delinquent? Mailloux (Canada); What is the actual status of research with regard to rendering help to abnormal delinquents without depriving them of the feeling of their general responsibility? Versele (Belgium.)

Sixth Annual Midwest Correctional Institution Workshop, Iowa State College, Ames, Iowa—April 7, 8, and 9, 1959 seventy wardens, correctional officers, vocational education directors in correctional institutions and others met at Iowa State College, Ames, Iowa for the Sixth Annual Workshop on correctional education. Representatives were present from institutions in eight Midwest states, New York, Pennsylvania and from Federal institutions. The workshop covered two broad areas; the philosophy and functions of correctional services and an evaluation of education and training in correctional institutions.

Mr. H. G. Moeller of the Federal Bureau of Prisons, Washington, D. C. gave the opening address in which he stressed the establishment of goals around an integrated and total educational program in order to prepare inmates for ultimate release. He pointed out the importance of com-

bining research with sound educational and administrative procedures. The same day Mr. Arthur T. Prasse, Commissioner of Correction in Pennsylvania explained the importance of the "Line" officer in rehabilitating inmates and stated that a prison "is not an island in a community or society". Mr. Quentin Ferm, Assistant Director of Correction in Wisconsin made it clear that a prison is but one link in the whole chain of rehabilitation from the time of arrest to release from correctional institutions.

After the formal presentations the members broke up into seven different workshop sections to take up special points of interest. These were; 1) Custody, 2) Classification, 3) Religious Programs, 4) Education, 5) Vocational and Trade Training, 6) Industries, and 7) Parole Procedures and Personnel.

As a part of the third day of workshop, Governor H. Loveless of Iowa addressed the members on the broader view of corrections as it related to society. He stated that the time has come to go beyond the narrow short sighted view of punishment to a larger vision of treatment in prisons and an acceptance of the released prisoner by society. At the final session the group selected a committee from the respective states to plan the program for the Seventh Annual Workshop to be held in Ames in 1960. The annual workshops are under the sponsorship of the Midwestern States Correctional Institutions, the Correctional Education Association, The Iowa Board of Control of State Institutions and the Extension Division of Iowa State College in Ames, Iowa.—From Professor Walter A. Lunden, Sociology, State College, Ames, Iowa.

FOREIGN LANGUAGE PERIODICALS AND ARTICLES OF INTEREST IN THE FIELD OF CRIMINAL LAW AND CRIMINOLOGY*

Compiled by KURT SCHWERIN†

ANUARIO DE DERECHO PENAL Y CIENCIAS PENALES. Madrid. Vol. 9, No. 3, Sep.—Dec. 1958.

Jean Graven, *Las ideas de la criminología*

* All periodicals listed are available in the Elbert H. Gary Library, Northwestern University School of Law, 357 East Chicago Ave., Chicago.

† Associate Professor of Law and Assistant Librarian, Northwestern University School of Law.

moderna en la legislación positiva (The ideas of modern criminology in positive legislation) (p. 473-505).

ARCHIV FÜR KRIMINOLOGIE. Lübeck. Vol. 122, nos. 1/2-5/6 (July/August—Nov./Dec. 1958)

The first issue no. 1/2 is introduced by a note in honor of the 75th birthday of Dr. Robert Heindl,

the editor of the *Archiv*. He assumed the editorship in 1919, shortly after *Hans Gross*, the founder of the *Archiv*, had died. Under Dr. Heindl's direction, the *Archiv* has maintained its worldwide reputation and thanks to his energy it resumed publication in 1955—after having been suspended from 1944 to 1954—and ranks again as one of the leading criminological journals in the world. Shortly after this issue had been issued, Dr. Heindl died (on Sep. 25, 1958). For an obituary, see the *Archiv*, vol. 123, Jan. 1959, pp. 1–10.—The new editor of the *Archiv* is President *Franz Meinert*.

E. Weinig & L. Lautenbach, *Die Gaschromatographie als neue Methode in der forensischen Toxikologie und Kriminalistik* (Gas chromatography as a new method in forensic toxicology and criminology) (no. 1/2, p. 11–17).—W. Specht & K. Fischer, *Ist der analytische Nachweis von Kerzenbrandstiftungen gesichert?* (Is there a safe proof for arson caused by candles? A new contribution to the evaluation of residues of incendiary agents) (p. 18–34).—Two articles on the problems of solving cases of insurance frauds by J. W. Verburt (no. 3/4, p. 78–80) and Steffen Berg (p. 81–89).—Insp. Hadersdorfer, *Ist die Identifizierung von Geschossen und Hülsen gefährdet? Experimentelle Untersuchungen*. (Experimental investigations on the identification of bullets and cartridges) (no. 3/4, p. 101–106).—W. Paulus, *Experimentelle Untersuchung zur Identifizierung von Nagellacken* (Experimental investigation on the identification of nail polish) (p. 122–25).—Hans von Hentig, *Der Hausfreund: Eine kriminal-psychologische Studie* (The cicisbeo: a criminological and psychological study) (no. 5/6, p. 141–50).—A. Schöntag, *Spektral- und Röntgenanalyse zur Aufklärung von Brandursachen* (Spectral and X ray analysis for finding incendiary causes) (p. 151–73).—Heinz Lichtenberg, *Neues Verfahren: "Chemische Nase" zur Feststellung von Blausäure* (A new method to determine hydrocyanic acid) (p. 177–78).—H. Hrabowski, *Die Bedeutung botanischer Hilfsindizien für die Aufklärung von Tatbeständen* (The significance of botanical aids for the clarification of evidence) (p. 179–87).—H. Lichtenberg, *Nachweis kleiner Mengen von Fluor: Eine verbesserte Methode* (The proof of small quantities of fluorine: An improved method) (p. 188–190).

CRIMINALIA. Mexico. Vol. 24, nos. 10–11 (Oct.–Nov.), 1958.

El Anteproyecto de Código Penal para el Distrito

y territorios federales (The tentative draft of the Criminal Code for the Federal District and territories) (no. 10, p. 597–671).—Luis Fernando Lozano, *Los Tribunales calificadoros de la Ciudad de México* (The "Tribunales calificadoros" of Mexico City). [This is a special court of administrative justice, especially in the field of violations of traffic and police regulations] (no. 11, p. 678–735).

INTERNATIONAL REVIEW OF CRIMINAL POLICY.

United Nations [New York] no. 12, July, 1957.

[Printed in June, 1958]

Inquiry on the treatment of abnormal offenders in Europe: Replies of fifteen countries to the United Nations questionnaire (Summaries in English, French and Spanish) (p. 3–101).—Articles by Marie-Marguerite Badonnel on *The principal categories of mentally abnormal offenders, the extent to which they should be exempted from ordinary justice and the institutions provided for their treatment* (p. 102–109).—Wilh. Solms, *The treatment of mentally abnormal offenders with a view to their social rehabilitation, and the role of the psychiatrist in the institutions provided for their treatment* (p. 110–116).—R. L. Bradley, *The treatment of young adult offenders from the point of view of providing special legislation and a special regime for this age group* (p. 117–124). [The three preceding articles are in French, with summaries in English and Spanish].—Dick Blomberg, *Methods of classification and re-education of young adult offenders and the role of the staff in the treatment of the individual* (In English, with summaries in French and Spanish) (p. 125–34).—Part II of the issue gives summaries of *United Nations activities in the field of the prevention of crime and the treatment of offenders*.

KRIMINALISTIK. Hamburg. Vol. 12, no. 11, Nov. 1958.

Obituary for Robert Heindl (p. 433–34).—Ordway Hilton *Der Beweis für die Echtheit eines Schriftstückes* (The proof for the authenticity of a manuscript) (p. 459–62).

REVUE DE DROIT PÉNAL ET DE CRIMINOLOGIE.

Brussels. Vol. 39 (1958–59), no. 1, Oct. 1958.

Jean Constant, *La protection du secret médical en droit médical comparé* (The protection of the medical secret in comparative criminal law) [A report presented at the Fifth Internat. Congress of Comparative Law, Brussels, August, 1958] (p. 3–21).