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Notes on Current and Recent Events

ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

The Scientific Study of Juvenile Delinquents in Minneapolis.—The Juvenile Protective League in Minneapolis has just undertaken a study of delinquents which has some new features and promises to become of more than local importance. Dr. Harris D. Newkirk, a Minneapolis physician who has been specializing in children's diseases, has been engaged to give the necessary medical services for a five-year campaign against the physical troubles of the boys and girls who get into the juvenile court and also to administer a plan for a more thorough study of the serious type of juvenile offenders. It was decided to include the psychological aspect of the problem along with others. As a result of some studies we had been making at the University of Minnesota in connection with the clinic in mental development, the writer was enlisted to assist by giving as much of his time as possible to this work. The following outline of the plan as far as it has been formulated has been prepared at the request of the editor of the Journal:

In one particular we seem to be especially favored, and that is in our opportunity to follow up the diagnosis of physical and mental deficiencies by remedial treatment, medical, surgical and educational, and to watch the same children for a long period. It is here that our work should ultimately be most instructive. In other cities it has been very rare that those who have been examined either medically or psychologically, or whose home conditions have been investigated, have been raised out of the ruts and their capacities subsequently watched as they were tried out on smoother roads. This, of course, requires the most persistent, time-taking effort and too much should not be expected. Only a small number of cases can, with the present facilities, be followed up with treatment and training. Moreover, there is all the uncertainty of working with human material which may suddenly be lost from observation. Already, however, Dr. Newkirk has made a very creditable beginning. Besides examining 107 cases during the first six months he has operated on 33 cases of adenoids, 28 cases of enlarged tonsils, circumcised 22, removed a troublesome appendix and given medical advice and treatment to numerous others. As a result decided improvement in health and conduct is not unusual. A friend of the league has generously provided a nurse who devotes all her time to the delinquents under treatment and to visiting their homes to give suggestions there. Largely through her assistance we are reaching about eight out of ten of those examined who seriously need surgical attention. St. Barnabas Hospital has placed at the disposal of Dr. Newkirk enough of its charity fund to care for the needy cases while at the hospital. Arrangements have been made also for eye examinations by specialists and supplying spectacles when required. Several local hospitals, physicians and charitable organizations lend their aid freely. Dr. Newkirk's records show that among 68 delinquents whose examinations during the first three months have been summarized, only two were without defects. The most serious difficulties were enlarged tonsils or adenoids, 29 cases; defective vision, 35 cases; malnutrition, 13 cases; anemia, 11 cases; defective hearing, 5 cases.

No argument is required to demonstrate the need of caring for the health of the delinquents and immediate correction of their physical handicaps. It is not so clear that it is advisable to attempt to modify their home or educational environments on account of the prolonged attention necessary and the uncertainty of the results. Our plan, however, is to make a complete history of as many cases as time will permit and then to attack the problem of training the delinquent as well as treating him. We assume that removing a physical handicap which has existed for years will leave the youth still seriously retarded and especially in need of educational assistance if he is to become properly adjusted to his social environment. In the history of the cases we expect to give adequate attention to the physical, mental, moral, educational and social factors. Cards have been provided for preserving all this data in the form of indexes, and two rooms in the court house have been assigned in which to make examinations. The nurse and the admirable corps of probation officers who are enthusiastic over any suggestions for improving their charges will assist us in completing the record of the cases studied.

An examination of the mental development reached will be made in the case of all recidivists and in other cases when desirable. For this purpose a series of tests are being arranged especially for the mental ages over ten which we meet most frequently. They will supplement the Binet scale and the tests devised by Dr. William Healy. I am spending considerable time in selecting and adapting these from the scores available in the psychological literature. Miss Eunice Peabody is trying out the tests on groups of school children to establish norms which will be available for our diagnosis. The question whether a child should be sent to the school for feeble-minded may now be fairly well settled by means of the knowledge of his physical and educational handicaps in connection with the degree of development reached as measured by the Binet tests. We know least about the question how much children will profit from special training. This is an educational problem of prime importance in our work as we must endeavor to select the children to be trained in order to get the largest result with the time that can be spared from other duties. I shall, therefore, study the problem of prognosticating improvement and try to devise special methods for reaching the child through his school. The city superintendent, Dr. Charles M. Jordan, has promised that the teachers of ungraded pupils in the schools from which the delinquents come will assist in carrying out these special directions for the school work.

It is important to recognize that this work could not have been undertaken except for the foundation which the Juvenile Protective League has been laying for the past six years with the hearty co-operation of the judges of the juvenile court. Judge John Day Smith, who organized the court in 1905 and helped to start many of its present agencies, when he became senior district judge in 1911, was succeeded by Judge Edward F. Waite. The latter was chosen primarily for the juvenile court work and like his predecessor combines in a marvelous way the dignity of the judge with the sympathy and encouragement of a father who can yet punish severely when necessary. The county has acquired an attractive farm of 92 acres on a little suburban lake, which is being developed into a small but model detention home—the Glen Lake Farm School for Boys. This is a special pride of Judge Waite who has plans for a series of cottages there to accommodate about fifteen each to meet the growing needs of the community.

At present forty to fifty boys can be kept at the farm and given healthful employment surrounded by the home influences of an inspiring director and his wife. The boys also have school work for part of the day. The farm school thus forms an important adjunct to our plans for training. At various times the league in its efforts for children's welfare has introduced and supported probation officers, night agents, vacation schools with their summer playgrounds, and a boys' club. At its last annual meeting the lecture by Dr. William Healy of Chicago did much to crystallize the decision to undertake the present study. It is thus endeavoring not only to help the delinquents more fully but to add in a small way to the constructive knowledge about the diagnosis, treatment and education of these embryonic law breakers.

J. B. MINER, University of Minnesota.

Is Vasectomy a Cruel and Unusual Punishment?—State of Washington, *Respondent, vs.* Peter Feilen, *Appellant.*

Appeal from a judgment of the superior court for King county, Main, J., entered September 30, 1911, upon a trial and conviction of rape. Affirmed.

Crow, J.—The defendant was convicted of the crime of statutory rape committed upon the person of a female child under the age of ten years and was sentenced to imprisonment for life in the state penitentiary. The final judgment and sentence from which he has appealed further ordered, adjudged, and decreed that: "An operation to be performed upon said Peter Feilen for the prevention of procreation, and the warden of the penitentiary of the state of Washington is hereby directed to have this order carried into effect at the said penitentiary by some qualified and capable surgeon by the operation known as vasectomy; said operation to be carefully and scientifically performed."

By his first assignment, appellant contends that the trial judge erred in submitting the case to the jury, for the reasons (1) that no degree of penetration was shown, and (2) that the testimony of his victim, the prosecuting witness, was not corroborated by such other evidence as tended to convict him of the crime charged. We find no merit in these contentions. The evidence will not be discussed or stated in this opinion, as no good purpose could be thereby served. We are convinced that, under the rule announced in *State v. Kincaid,* 27 Wash. Dec. 114, 124 Pac. 684, the evidence was sufficient to comply with the requirements of *Rem. & Bal. Code,* Section 2437. We are also satisfied that the evidence afforded that degree and character of corroboration required by Section 2155, *Rem. & Bal.,* and from all of the evidence we conclude that the only verdict that should have been returned was the one that the jury did return. The case was for the jury, and their verdict will not be disturbed.

Appellant was prosecuted under *Rem. & Bal. Code,* Section 2436, and the penalty of life imprisonment was properly imposed. *Rem. & Bal. Code,* Section 2287, provides that:

"Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation."

It was under the authority of this section that the trial judge ordered the operation of vasectomy, and appellant, by his remaining assignments, contends

that it is unconstitutional in that an operation for the prevention of procreation is a cruel punishment prohibited by art. 1, section 14, of the state constitution, which directs that "excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted." As the statute does not prescribe any particular operation for the prevention of procreation, the trial judge ordered that the operation known as vasectomy be carefully and skillfully performed. The question then presented for our consideration is whether the operation of vasectomy, carefully and skillfully performed, must be judicially declared a cruel punishment forbidden by the constitution. No showing has been made to the effect that it will in fact subject appellant to any marked degree of physical torture, suffering or pain. That question was doubtless considered and passed upon by the legislature when it enacted the statute. Appellant further contends that the imposition of the alleged cruel punishment as a part of the sentence necessitates a reversal of the judgment. This would not be true, even though we were to hold the operation to be an infliction of cruel punishment, as the judgment of conviction would have to be affirmed with directions to enforce the penalty of life imprisonment. When a sentence is legal in one part and illegal in another, it is not open to controversy that the illegal, if separable, may be disregarded and the legal enforced. *United States v. Pridgeon,* 153, U. S. 48; *State v. Williams,* 77, Mo. 310, 313.

The crime of which appellant has been convicted is brutal, heinous and revolting, and one for which, if the legislature so determined, the death penalty might be inflicted without infringement of any constitutional inhibition. It is a crime for which, in some jurisdictions, the death penalty has been imposed. 33 *Cyc.* 1518. If for such a crime death would not be held a cruel punishment, then certainly any penalty less than death, devoid of physical torture, might also be inflicted. In the matter of penalties for criminal offenses the rule is that the discretion of the legislature will not be disturbed by the courts except in extreme cases.

"It would be an interference with matters left by the constitution to the legislative department of the government, for us to undertake to weigh the propriety of this or that penalty fixed by the legislature for specific offenses. So long as they do not provide cruel and unusual punishments such as disgraced the civilization of former ages, and make one shudder with horror to read of them, as drawing, quartering, burning, etc., the constitution does not put any limit upon legislative discretion." *Whitten v. State,* 47 Ga. 297.

On the theory that modern scientific investigation shows that idiocy, insanity, imbecility, and criminality are congenital and hereditary, the legislatures of California, Connecticut, Indiana, Iowa, New Jersey, and perhaps other states, in the exercise of the police power, have enacted laws providing for the sterilization of idiots, insane, imbeciles, and habitual criminals. In the enforcement of these statutes vasectomy seems to be a common operation. Dr. Clark Bell, in an article on hereditary criminality and the asexualization of criminals, found at page 134, vol. 27, *Medico-Legal Journal,* quotes with approval the following language from an article contributed to *Pearson's Magazine* for November, 1909, by Warren W. Foster, senior judge of the court of general sessions of the peace of the county of New York:

"Vasectomy is known to the medical profession as 'an office operation' painlessly performed in a few minutes, under an anæsthetic (cocaine) through a skin

cut half an inch long, and entailing no wound infection, and no confinement to bed. 'It is less serious than the extraction of a tooth,' to quote from Dr. William D. Belfield, of Chicago, one of the pioneers in the movement for the sterilization of criminals by vasectomy, an opinion that finds ample corroboration among practitioners. * * * There appears to be a wonderful unanimity in favor of the prevention of their future propagation. The *Journal of the American Medical Association* recommends it, as does the Chicago Physicians' Club, the Southern District Medical Society, and the Chicago Society of Social Hygiene. The Chicago *Evening Post,* speaking of the Indiana law, says that it is one of the most important reforms before the people, that 'rarely has a big thing come with so little fanfare of the trumpets.' The Chicago *Tribune* says that 'the sterilization of defectives and habitual criminals is a measure of social economy.' The sterilization of convicts by vasectomy was actually performed for the first time in this country, so far as is known, in October, 1899, by Dr. H. C. Sharp, of Indianapolis, then physician to the Indiana State Reformatory at Jeffersonville, though the value of the operation for healing purposes had long been known. He continued to perform this operation with the consent of the convict (not by legislative authority) for some years. Influential physicians heard of his work and were so favorably impressed with it that they endorsed the movement which resulted in the passage of the law now upon the Indiana statute books. Dr. Sharp has this to say of this method of relief to society: 'Vasectomy consists of ligating and resecting a small portion of the *vas deferens.* The operation is indeed very simple and easy to perform; I do it without administering an anæsthetic, either general or local. It requires about three minutes' time to perform the operation and the subject returns to his work immediately, suffers no inconvenience, and is in no way impaired for his pursuit of life, liberty and happiness, but is effectively sterilized.'"

Must the operation of vasectomy thus approved by eminent scientific and legal writers, be necessarily held a cruel punishment under our constitutional restriction when applied to one guilty of the crime of which appellant has been convicted? Cruel punishments, in contemplation of such constitutional restriction, have been repeatedly discussed and defined, although we have not been cited to, nor have we been able to find, any case in which the operation of vasectomy has been discussed. In *State v. Woodward,* 68 W. Va. 66, 69 S. E. 385, a recent and well-considered case which may be consulted with much profit, Brannon, Justice, said:

"The legislature is clothed with power well nigh unlimited to define crimes and fix their punishments. So its enactments do not deprive of life, liberty or property without due process of law and the judgment of a man's peers its will is absolute. It can take life, it can take liberty, it can take property, for crime. 'The legislatures of the different states have the inherent power to prohibit and punish any act as a crime provided they do not violate the restrictions of the state and federal constitutions; and the courts cannot look further into the propriety of a penal statute than to ascertain whether the legislature had the power to enact it.' 12 *Cyc.* 136. 'The power of the legislature to impose fines and penalties for a violation of its statutory requirements is coeval with government.' *Mo. P. R. R. Co. v. Humes,* 115 U. S. 512. The legislature is ordinarily the judge of the expediency of creating new crimes, and of prescribing penalties, whether light or severe. *Commonwealth v. Murphy,* 165 Mass. 66, *Southern Ex-*

press Co. v. Commonwealth, 92 Va. 66. For such a fundamental proposition I need cite no further authority. * * * What is meant by the provision against cruel and unusual punishment? It is hard to say definitely. Here is something prohibited, and in order to say what this is we must revert to the past to ascertain what is the evil to be remedied. Within the pale of due process the legislature has power to define crimes and fix punishments, great though they may be, limited only by the provision that they shall not be cruel or unusual or disproportionate to the character of the offense. Going back to ascertain what was intended by this constitutional provision the history of the law tells us of the terrible punishment visited by the ancient law upon convict criminals. In our days of advanced christianity and civilization this review is most interesting yet shocking and heart-rending."

The learned jurist then proceeds with the narration of the cruel punishments mentioned in 4 *Blackstone,* at pages 92, 327 and 377, and after citing and discussing the English Bill of Rights; *Whitten v. State,* 47 Ga. 301; *Aldridge Case,* 2 Va. Cases, 447; *Wyatt's Case,* 6 Rand 694; *In re Kemmler,* 136 U. S. 436, 446; *Wilkerson v. Utah,* 99 U. S. 130, 135; Cooley, Const. Lim. (4th ed.), 408; Wharton, Crim. Law (7th ed.), Section 3405; *Hobbs v. State,* 133 Ind. 404, 32 N. E. 1019, 18 L. R. A. 774; *State v. Williams,* 77 Mo. 310; *Weems v. United States.* 217 U. S. 349; *O'Neil v. Vermont,* 144 U. S. 323; and other cases says:

"In short the text writers and cases say that the clause is aimed at those ancient punishments, those horrible, inhuman, barbarous inflictions."

In *In re O'Shea,* 11 Cal. App. 568, 105 Pac. 777, the California court of appeals for the first district said:

"Cruel and unusual punishments are punishments of a barbarous character and unknown to the common law. The word, when it first found place in the Bill of Rights, meant not a fine or imprisonment, or both, but such punishment as that inflicted by the whipping post, the pillory, burning at the stake, breaking on the wheel, and the like; or quartering the culprit, cutting off his nose, ears or limbs, or strangling him to death. It was such severe, cruel and unusual punishments as disgraced the civilization of former ages and made one shudder with horror to read of them. Cooley on Constitutional Limitations (7th ed.), p. 471, *et seq.; State v. McCauley,* 15 Cal. 429; *Whitten v. State,* 133 Ind. 404, 32 N. E. 1019; *State v. Williams,* 77 Mo. 310. 'The legislature is ordinarily the judge of the expediency of creating new crimes, and prescribing the punishment, whether light or severe.' *Commonwealth v. Murphy,* 165 Mass. 66, 42 N. E. 504, 52 Am. St. Rep. 496, 30 L. R. A. 734; *Southern Express Co. v. Com.,* 92 Va. 59, 22 S. E. 809, 41 L. R. A., 436."

Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the legislature save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted.

The judgment is affirmed. Parker, Chadwick, and Gose, JJ., concur.

From STEVENSON SMITH, Seattle.

Criminal Attempts.—In a pamphlet with the above title W. H. Hitchler called attention to the difficulties encountered in formulating a proper definition of an attempt. Mr. Hitchler finds no satisfactory definition of an attempt in the books. In its essential elements an attempt consists of a criminal intent and a criminal act. The criminal act is composed of a physical and a mental element.

The mental element may be called the specific intent, that which denotes the purpose towards the accomplishment of which the act is directed and which is an essential element of the criminal act, as distinguished from the criminal intent, that is the intention to produce a result which, if accomplished, would constitute a crime, which is concurrent with but not contained in the criminal act. An attempt is to be distinguished from a solicitation and from a conspiracy. If a person be solicited by another to commit a crime and the person solicited refuses, the solicitor is guilty of a solicitation; if he consents, both persons are guilty of a conspiracy; in neither case is either party guilty of an attempt. In order to constitute an attempt there must be an act sufficiently proximate to the intended result. Not every act committed in furtherance of a design to commit a crime is an attempt. Thus if A, intending to poison B, should procure poison with which to do it a year before the contemplated poisoning he would not be guilty of an attempt to kill. One of the chief difficulties in the law of attempts is in determining the relation which the act done must sustain to the intended offense. Usually the word "proximate" has been used in defining this relation. Thus it has been said that the act done "must be proximate and not remote," and that it "must proximately lead to the commission of the crime." Mr. Hitchler illustrates the nicety of the distinctions involved by the following series of Pennsylvania cases on attempts to commit burglary: "X, intending to commit burglary, procures a complete set of burglar implements; he is not guilty of an attempt. He meets a confederate at a distance from the house; he is not guilty. He arrives in front of the house and watches it; he is not guilty. He prepares some of his implements; he is not guilty. He breaks the gate of the yard; he is guilty. He enters the yard without breaking the gate; he is not guilty. He hides in the barn; he is not guilty. He assaults the owner in the yard; he is guilty. He goes upon the steps; he is guilty. He inserts key in lock or places a ladder against the window; he is guilty. He removes moulding or breaks transom; he is guilty." The numerous cases cited and examined show the efforts of the courts to attain precision with respect to an inherently difficult subject matter. E. L.

COURTS—LAWS.

Law Governing Domestic Relations in Indiana.—*Acts of 1907, page 160, Chapter 105. (Indiana). Approved March 5, 1907.* AN ACT to provide for the punishment of the parents of children who abandom them or neglect or refuse to provide proper home, care, food and clothing for them, and to provide for the application of the wages, income or earnings of such persons abandoning such child or children, and giving the court authority to order and direct the payment of the same for the support of such child or children, providing for the expense of extradition of and the production of the accused, and declaring an emergency.

CHILD DESERTION—FAILURE TO SUPPORT—PENALTY.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That the father, or when charged by law with the maintenance thereof, the mother of a child or children under fourteen years of age living in this state, who being able either by reason of having means or by personal services, labor or earnings shall willfully neglect or refuse to provide such child or children with necessary and proper home, care, food and clothing, shall be deemed guilty

of a felony, and upon conviction be punished by imprisonment in the state prison or reformatory for not more than seven years nor less than one year, or in a county jail or in a workhouse at hard labor for not more than one year nor less than three months: *Provided, however,* If upon conviction and before sentence he shall appear before the court in which said conviction shall have taken place and enter into bond to the State of Indiana in such penal sum as the court shall fix, with surety to the approval of the court, conditioned that he or she shall furnish said child or children, with necessary and proper home, care, food and clothing, then said court may suspend such sentence therein, or if the court deems advisable he may suspend such sentence without requiring such bond; *Provided, Further,* That upon a failure of such parent to comply with said (order or) undertaking he or she may be arrested by the sheriff or other officer on a warrant issued on the sworn complaint of a responsible person, or the precipe of the prosecuting attorney, and brought before the court for sentence, whereupon the court may pass sentence, or for good cause shown may take a new undertaking and further suspend sentence as may be just and proper.

WAGES OR INCOME—SUPPORT—ORDER OF COURT.

Sec. 2. It shall be lawful for the circuit court, or the criminal court in counties where one exists, in case of conviction of any person for the offense described in section one of this act, to make an order that such offender shall pay to the person named by said court such portion of his or her wages, income or earnings as shall be proper and just for the care and support and maintenance of his or her child or children, and to enforce the payment of such sums the said court may notify the employer or other persons from whom such offender receives his wages, earnings or income of the proposed action of the court, and upon such order being entered after such notice such employer or other person from whom said offender receives wages, earnings or income, shall pay the same, or such part thereof as the court shall order to such person designated by the court to be used for the care and support of said child or children, and so long as the order of the court is complied with the said court may suspend sentence against said offender, such employer or other person from whom such offender receives wages, earnings or income upon payment to the person designated by said court shall be released from any and all liabilities to any other person to the extent of such payment. In case it shall be made to appear to said court that such offender has prevented or is preventing the carrying out of such order, then a warrant shall issue for his arrest in manner and form as provided in section one of this act.

COST OF PROSECUTIONS.

Sec. 3. All costs incurred by the sheriff or other officers in bringing such parent or parents in the county where the said offense shall have been committed, and all costs incident to the extradition of such parent or parents shall be paid by the county in which such offense shall have been committed; and the county council shall make such appropriations as may be necessary to carry into effect the provisions and purposes of this act.

"It appears that this statute fills the two purposes for which it is intended very satisfactorily, first, to provide a penalty and second, to provide a means whereby the child or children may have a means of support—a means that can be enforced. It has been construed that these cases may be tried in a juvenile

court, that desertion is not a part of the crime as defined by this law. It also provides a means of securing the arrest of an offender and bringing him in the court, and the venue is in any county where the child is, and is not receiving the proper support.

"I have had several indictments under this law and have found it very practical and satisfactory in every way." Extract from correspondence.—Eds.

WM. J. WOOD, Lebanon, Ind., Pros. Atty. 20th Judicial Circuit.

Instructions to the Jury in Montana.—Below is the text of a letter dated November 19, 1912, from Judge George B. Winston of Anaconda, Montana. It was suggested by a reading of the recent report of Committee E of the Institute. Thereafter is a copy of the law of Montana relating to criminal procedure.—[Eds.]

"I just read with interest the report of Committee 'E' of the Institute in the matter of criminal procedure, reported on page 566, Vol. III, number 4, of the Journal of the American Institute of Criminal Law and Criminology for November, 1912, and especially recommenadtion two and the discussion concerning it. Recommendation two is as follows: 'That such legislation be had as will give to trial judges the right to charge jurors orally and to limit exceptions to such charge to the specific objections made by counsel at the time of the charge in the presence of the jury and before it has retired from the bar.' I think that this recommendation is open to a number of very serious objections, and that many of the objections urged by Mr. William E. Higgins to the recommendation are entitled to great weight. But the chief things to be objected to in this recommendation, it seems to me, are that jurors should be charged orally, and that the exceptions to such charge and the specific objections thereto should be made in the presence of the jury. In view of the fact that the legislature of Montana in 1907 passed two acts relating to this very subject, one regulating the practice in civil cases and one in criminal cases, and both being alike, I am taking the liberty of writing you and of sending you a copy of the act regulating the method of procedure in the trial of criminal actions. It appears to me that the method prescribed by our code is so much better in every way than the one recommended by the committee mentioned that I am going to ask that you give it publication in your Journal. This law has been in force in Montana since March, 1907, and has worked most satisfactorily. It has had the effect of minimizing the reversal of cases on grounds of error in the refusal to give and in the giving of instructions, in both civil and criminal actions. It works no hardship upon either party to the trial and, in my opinion, is one of the most salutary provisions of both our civil and criminal practice acts. Instructions are settled out of the presence and hearing of the jury and, therefore, the jury cannot be influenced or prejudiced by any argument or theory of counsel concerning the matter of the giving or the refusal to give instructions. When the jury are called in after the instructions have been settled they have no intimation whatsoever as to what instructions are given at the request of counsel or what are given of the court's own motion. Neither do they receive any intimation as to what was the contention or theory advanced by counsel during the settlement of the instructions. In actual practice this is how this procedure works: when the evidence is in, the court asks counsel if they have any instructions to offer and, if so, to hand them to the court. On receipt of the requested instructions the court passes those requested by the plaintiff to counsel for the

defendant, if copies have not already been given to him; and those requested by the defendant are handed to counsel for the plaintiff. Abundant opportunity is allowed each side to study these instructions, as well as those which the court proposes of its own motion. Then the court invites an informal argument from counsel as to the propriety of giving or refusing to give these instructions. The judge after the argument indicates to counsel what instructions he proposes to give and what he proposes to refuse to give and then counsel state their objections, if they have any, and after the ruling on these objections the parties take their exceptions. All this, as you will note from the act, is made a record of by the court reporter. Often several hours are consumed in the settlement of instructions both in criminal and civil cases, the time depending largely on the importance of the case and on the law points involved. It seems to me that the practice is as fair to a defendant in a criminal case as he has any right to expect. And it is certainly only just that the trial judge should have the right to know, before he gives or refuses to give an instruction, just what complaint the defendant has to make in relation thereto. Counsel in the case usually has weeks, if not months, before the trial to become acquainted with the facts and the law in the case, and should be in a better position than the judge to point out error, if any, in the instructions submitted. To my mind, it is a confession of great weakness on the part of any attorney to argue that he has not sufficient opportunity to formulate objections to the charge within the time allowed for the settlement thereof. If he, who should be familiar with the facts and law of the case, cannot protect his client's interest in this regard, then he has no business in the practice of the law. The real objection on the part of those lawyers who seek to prevent such legislation is that they want to be in a position where they can put the court in error. I think the law we are now working under in this regard is as nearly ideal as it could be made. Notwithstanding this, some lawyers in this state attempted to have it amended at the last session of the legislature, in a manner that would have emasculated the act completely. I am glad to say that they failed in this effort."

GEO. B. WINSTON, Judge Third Judicial District, Anaconda, Montana.

LAWS OF MONTANA. TENTH SESSION, 1907. P. 197.

CHAPTER 82.

An Act to Amend Section 2070 of the Penal Code of Montana, and to Repeal an Act Approved February 15th, 1902, Relating to the Method of Procedure in the Trial of Criminal Actions.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section No. 2070 of the penal code of the State of Montana be and the same is hereby amended, so as to read as follows:

1. The county attorney must state the case and offer evidence in support of the prosecution.

2. The defendant, or his counsel, may then state his defense and offer evidence in support thereof.

3. The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of jutsice, permit them to offer evidence upon their original case.

4. When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing and

numbered by the party, or his attorney, and together with a written request asking the same, and signed by the party, or his attonrey, delivered to the court. At all times prior to charging the jury the instructions to be given shall be, without the presence of the jury, settled by the court, at which settlement counsel for the parties shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court, and to present and argue to the court objections and exceptions to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of the instructions the respective counsel, or the parties, shall specify and state the particular ground on which the instruction is objected or excepted to, and it shall not be sufficient in stating the ground of such objection or exception to state generally that the instruction does not state the law, or is against law, but such ground of objection or exception shall specify particularly wherein the instruction is insufficient, or does not state the law, or what particular clause therein is objected to.

The court shall pass upon the objection to the instructions requested and also those proposed to be given by the court, and shall either give each instruction as requested or positively refuse to do so, or give the instruction requested with a modification, and shall mark or endorse upon each instruction offered and requested by the parties in such manner that it shall distinctly appear what instructions were given in whole or in part, and in like manner those refused or modified, and if modified, wherein the modification consisted. The court shall also give the instructions as originally proposed to be given by the court, or as modified, and all the instructions given by the court, together with those refused, must be filed as a part of the record of the cause.

The court stenographer shall be present at such settlement and shall take down all the objections and exceptions of the respective counsel to all or any of the instructions given or refused by the court together with the modifications made therein, and the ruling of the court thereon, and at the close of the trial such objections and exceptions taken during the settlement, together with the rulings of the court thereon, must be written out at length or printed in type by the stenographer and filed with the clerk forthwith, and thereafter such exceptions may be settled in a bill of exceptions as provided in section 2171 of the penal code of Montana, or an act of the eighth legislative assembly of the State of Montana Entitled "An Act to Provide for the Settlement of Bills of Exception taken before or after trial in Criminal Cases and to Provide for the Review by the Supreme Court on Appeal of Proceedings, Evidence and Matters contained in such Bill of Exceptions," approved February 26th, 1903.

No motion for new trial on the ground of errors in the instructions given shall be granted by the district court unless the error so assigned was specifically pointed out and excepted to at the settlement of the instructions as herein provided; and no cause shall be reversed by the Supreme Court for any error in the instructions which was not specifically pointed out and excepted to at the settlement of the instructions herein specified, and such error and exception incorporated in and settled in the bill of exceptions as herein provided.

5. When the instructions have been passed upon and settled by the court, and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as are

passed upon and settled at such settlement. In charging the jury, the court shall give to them all matters of law which it thinks necessary for its information in rendering a verdict.

6. When the jury has been charged, unless the case is submitted to the jury, on either side, or on both sides, without argument, the plaintiff must commence and may conclude the argument. If several defendants, having several defenses, appear by different counsel, the court must determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case, as given in the instructions of the court, as well as upon the evidence of the case.

Section 2. That an act approved February 15th, 1901, entitled, "An Act to Amend Section 2070 of the Penal Code of Montana, relating to the method of Procedure in the trials of Criminal Actions," and all acts and parts of acts in conflict herewith be and the same are hereby repealed.

Section 3. This Act shall take effect and be in force from and after its passage and approval by the Governor.

Approved March 4th, 1907.

For Relief to Persons Erroneously Convicted.—The following is the bill referred to in Dean Wigmore's editorial in the present issue. Together with the editorial and Mr. Borchard's article in this number of the JOURNAL it has been reprinted in Senate Document 974, 62d Congress, 3rd Session, and may be obtained from Senator Sutherland or any other member of Congress. The bill was introduced in the House on December 5 by Mr. Evans and in the Senate on December 10 by Senator Sutherland. H. R., 26748; S. 7675.

To grant relief to persons erroneously convicted in courts of the United States.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. That any person who having been convicted for any crime or offense against the United States, shall hereafter, on appeal from the judgment of conviction or on the retrial or rehearing of his case, be found to have been innocent of the crime with which he was charged and not guilty of any other offense against the United States, or who, after inquiry by the Executive has received a pardon on the ground of innocence, may, under the conditions hereinafter mentioned, apply by petition for indemnification for the pecuniary injury he has sustained through his erroneous conviction and imprisonment.

The bill is limited to convictions in the federal courts—that is, crimes or offenses against the United States. It is limited to those only who have been *convicted and imprisoned* under a judgment of conviction, and whose innocence is subsequently established. The right to the relief is discretionary only. It is called here indemnification, although some other word may be substituted. The relief is limited to the *pecuniary* injury, thus excluding all compensation for *moral* injury, which, in case of conviction for crime, is generally the more serious element of injury. This limitation follows, in general, the European statutes and has as its object the restriction to its narrowest limits (while acknowledging the principle) of a demand on the State Treasury. When the innocence is established after the wrongful conviction *plus* imprisonment, the indemnity should cover the injury during the whole period of detention, both before and after trial. The expression "of the crime which he was charged *or of any other offense against the United States*" has been used to cover cases where the indictment may fail on the original count, but claimant may yet be guilty of another or a minor offense. Therefore, if the accused has committed *any* offense

against the United States, his right to relief is barred. Some may raise the objection that the right to petition the United States is granted in the bill, even though the accused may have a private right of action against an individual for false imprisonment or malicious prosecution. I do not consider it desirable to insert this limitation in the bill, though if there is a general feeling that the accused must exhaust all his other remedies, either as a bar to this relief or as a condition precedent to demanding it, words to this effect will have to be inserted. My own feeling is that the court of claims should take into consideration, under section 9, all matters connected with the case, including the other remedies of the accused, whether he has a possible right of action against third persons, how much that right may have been worth, the possibility of securing and executing judgment, and particularly the extent of the *State's* participation in the wrong inflicted on the individual.

§ 2. That the claimant may, within six months after he has been finally acquitted or pardoned on the ground of innocence, petition the Court of Claims for the relief granted in this act.

A very short statute of limitations is fixed, following the European statutes in this respect. The claim is to be brought before the court of claims, which has been granted jurisdiction over similar awards made by the United States to individual claimants. (See, for example, the French Spoilations Act, 23 Stat. at L. 283).

§ 3. That the court is hereby authorized to make all needful rules and regulations consistent with the laws of the land for executing the provisions hereof.

This follows in general the provisions of section 2 of the French Spoilations Act, 23 Stat. at L. 283.

§ 4. That the claimant shall have the burden of proving his innocence, in that he must show that the act with which he was charged was not committed at all, or, if committed, was not committed by the accused.

The cases in which the relief can be claimed are limited here to those only in which the claimant shall affirmatively prove his innocence. Hence, only a most flagrant case of injustice could be brought within the terms of this section. In providing that the claimant must show that the crime was not committed at all, or if committed, was not committed by the accused, I am following in general the provisions of the law of Sweden and Hungary. It is likewise intended to limit the relief to cases in which the justice of an award is obvious.

§ 5. That the claimant must show that he has not, by his acts or failure to act, either intentionally or by wilful misconduct or negligence, contributed to bring about his arrest or conviction.

This carries out simply the equitable maxim that no one shall profit by his own wrong or come into court with unclean hands. It follows the provisions generally found in the European statutes, although these provide, for example, in the German act, that gross negligence must exist to bar the right. In the United States we are opposed to fixing degrees of negligence. (See 18 Harvard Law Review, 536-37).

§ 6. That the court of claims shall examine the validity and amount of all claims included within the description of this act; they shall receive all suitable testimony on oath or affirmation and all other proper evidence; and they shall report all such conclusions of fact and law as in their judgment may affect the right to relief.

In its general provisions this section follows section 3 of the French *Spoliations Act*, 23 Stat. at L. 283. Under it the court of claims would, of course, receive the record from the trial court, the appellate court, and the second trial court, in order to determine the justice of relief in the case. They may also call for oral or written testimony whenever desired. This section gives the court full power and opportunity to arrive at the facts.

§ 7. That upon proof satisfactory to the court of claims that the claimant is unable to advance the costs of court and of process, the cost of obtaining and

printing the record of the original proceedings and of securing the attendance of such witnesses as the chief justice or the presiding judge of the court of claims shall certify to be necessary, and the service of all notices required by this Act, shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the secretary of the treasury of a duly authenticated order, certified by the clerk of the court of claims and signed by the chief justice or, in his absence, by the presiding judge of said court.

The claimant will, in most cases, be a poor person and it is desirable that the expense of bringing up the record should not fall as a burden on him. This expense might, in fact, prevent the poor claimant from bringing suit at all. It should, therefore, be provided that in such cases where the Chief Justice, or the presiding judge of the court of claims, considers that the claimant has made out a *prima facie* case of erroneous conviction and his own innocence that the expense of bringing up the record shall be borne by the treasury. Where the claimant does not make out a *prima facie* case coming within the provisions of this Act, the chief justice of the court of claims would not make the certification necessary to have the treasury bear the expense.

§ 8. That the court shall cause notice of all petitions presented under this act to be served on the Attorney General of the United States, who shall be authorized, by himself or his assistant, to examine witnesses, to cause testimony to be taken under this Act, and to be heard by the court. He shall resist all claims presented under this Act by all proper legal defenses.

The purpose of this section is self-explanatory. In terminology it follows the provisions of section 4 of the French Spoliations Act, 23 Stat. at L. 284.

§ 9. That the court of claims in granting or refusing the relief demanded shall take into consideration all the circumstances of the case which may warrant or defeat or in any other way affect the right to and the amount of the relief herein provided for, but in no case shall the relief granted exceed five thousand dollars.

The granting of the relief is *discretionary,* as was stated in the beginning. Most of the European statutes generally present a list of conditions which shall bar or limit the right to the relief, but I consider it best to follow the French law which makes no mention of limiting conditions, but leaves the judge to determine from all the circumstances of the case whether any and how much relief is proper. The relief is limited to five thousand dollars. This provision is to limit any exorbitant claims which may be brought.

The court of claims is given jurisdiction over the matter in preference to the trial court, or the appellate court, or the second trial court (which presumably could judge better of the merits and circumstances of the case) in order to maintain the traditions of American judicial procedure. If the jury or trial court were given the right to pronounce on the propriety of an award in a case of acquittal (as is the case in some of the European countries) it would bring into our law a new kind of acquittal, in which the jury or judge could acquit *with degrees of approval or sympathy.* The distinction would be an odious one to make. While it would be desirable to have the benefit of the special knowledge of the case secured by the trial court, or the jury, still it is better to forego this advantage for the sake of conformity with legal custom and leave the establishment of the damage to a new court conforming in its jurisdiction in this case to its jurisdiction in similar cases of claims against the United States.

In all respects (a) as to the person indemnified; (b) as to what he must show; (c) as to the amount of the indemnity; and (d) as to the discretionary character of the relief, the indemnity has been limited to the most flagrant cases of unjust conviction and deserving relief.

§10. That in all cases of final judgments by the court of claims the sum due thereby shall be paid out of any general appropriation made by law for the pay-

ment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the court of claims, and signed by the Chief Justice, or, in his absence, by the presiding judge of said court.

EDWIN M. BORCHARD, LAW LIBRARIAN OF CONGRESS.

PENOLOGY.

The Illinois State Prison Commission and Its Plans.—The Illinois State Prison Commission was created three years ago by appointment of Governor Deneen. To one of the members of this commission, Mr. James A. Patten of Evanston, we are indebted for the facts contained in this note. As a member of the commission and in many other ways he has in the past and is yet devoting his time, energy, means, and rare good judgment to the public welfare. It was largely through his personal effort that the commissioners have been able to prepare the way for what will one day be, from every view-point, the most notable prison in the civilized world. All this preparation, be it said to the credit of the commissioners, has been accomplished in the face of obstacles of a political nature which only intelligent men of affairs can circumvent.

For many years various industrial establishments have been encroaching upon the walls of the state penitentiary at Joliet. Several unfavorable consequences from the point of view of the penitentiary interests have followed upon this condition. The atmosphere has been vitiated by smoke and with foulness due to other sources. On this account alone the location has become highly undesirable as a place for the state prison. Sanitary conditions cannot be maintained and consequently, we believe, the effectiveness of the institution as a place of penal confinement is to some extent minimized. Surrounded as the prison is with property that has been acquired for industrial uses, the site itself has become immensely valuable from the commercial point of view. This fact bears upon the problem of economic administration. It is impossible as long as the prison is in its present situation to work out any scheme of outdoor farm labor which experience elsewhere has proven to be a most salutary form of labor from the points of view of practical education, reform, and health.

Finally, located as it is, the difficulty of expansion has become a matter of serious consideration. Whatever may be the dreams of criminologists, and social reformers in general, we are not yet at the stage at which we can sanely neglect the practicability of prison expansion in choosing our sites and in erecting our buildings.

These are the considerations that led the Governor to appoint a special commission with instructions to choose a site, purchase a tract of land, and develop plans for buildings. It was the purpose of this commission, Mr. Patten tells us, to find land adequate to the needs of the new prison within a short distance of the city of Joliet in order that, when the time for building should arrive, convict labor might be employed if it should be found practicable. It was desired, also, to secure land on which sand, gravel, and stone could be found in considerable quantities, and furthermore land which would be suitable for tilling purposes. The commission was fortunate in securing at reasonable

cost a tract of 2000 acres lying about two miles south of Joliet, which meets practically all of these requirements.

Mr. W. C. Zimmerman, State Architect of Illinois, under the direction of the commission, has prepared and submitted plans for the buildings and the legislature of the state at its next session will be asked to make an appropriation to cover the cost of putting the plans into execution. Mr. Zimmerman, before drawing his plans, made a special study of prison construction in America and in Europe. None of the best prisons have escaped his attention, and he has evolved plans which for their extreme simplicity, the readiness with which they lend themselves to the most exacting requirements for ventilation and convenience of administration, cannot, in our opinion, be excelled. For the cuts on the following pages we are indebted to Mr. Zimmerman and the Chicago *Tribune*.

A study of the plans shows that the prison, constructed as it is to be of circular units arranged radially about a central point, is capable of infinite expansion; that each of these units is accessible to direct ventilation, that is, each cell may have an outside window, and that all units are equally accessible to the common dining room at the center of the sixty-acre circle occupied by the units.

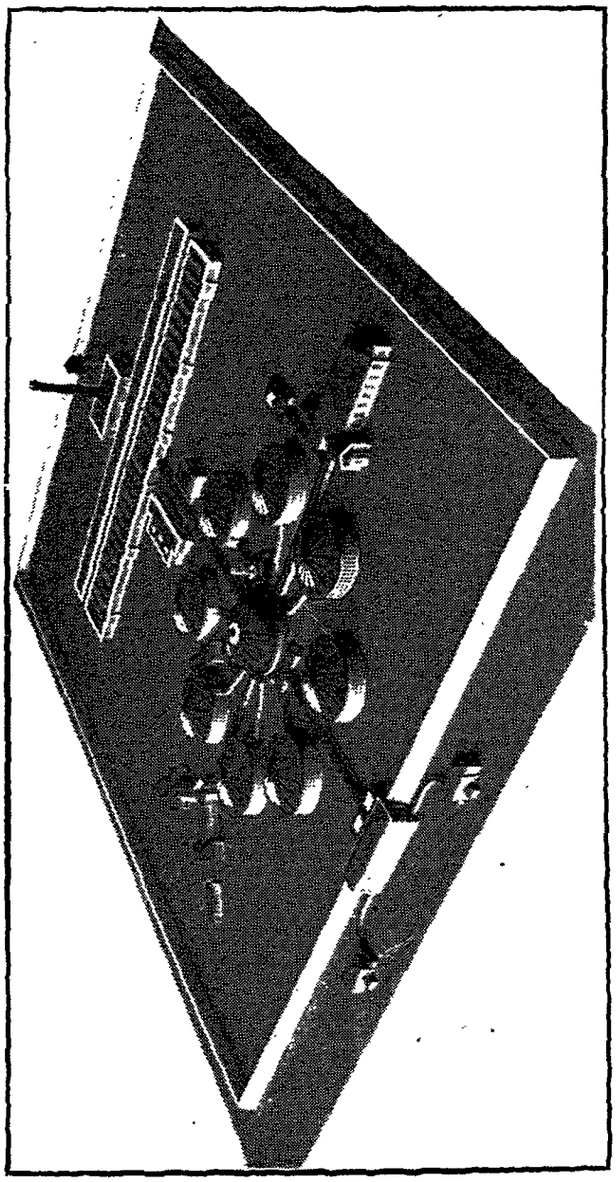
The prevailing construction of cell blocks in the United States embodies these features:

1, Walls of the building; 2, the corridor next to the walls; 3, the cell blocks which are back to back excepting for the so-called utility corridor which separates the rows of cells. The natural light for the cells must come through windows in the wall of the building.

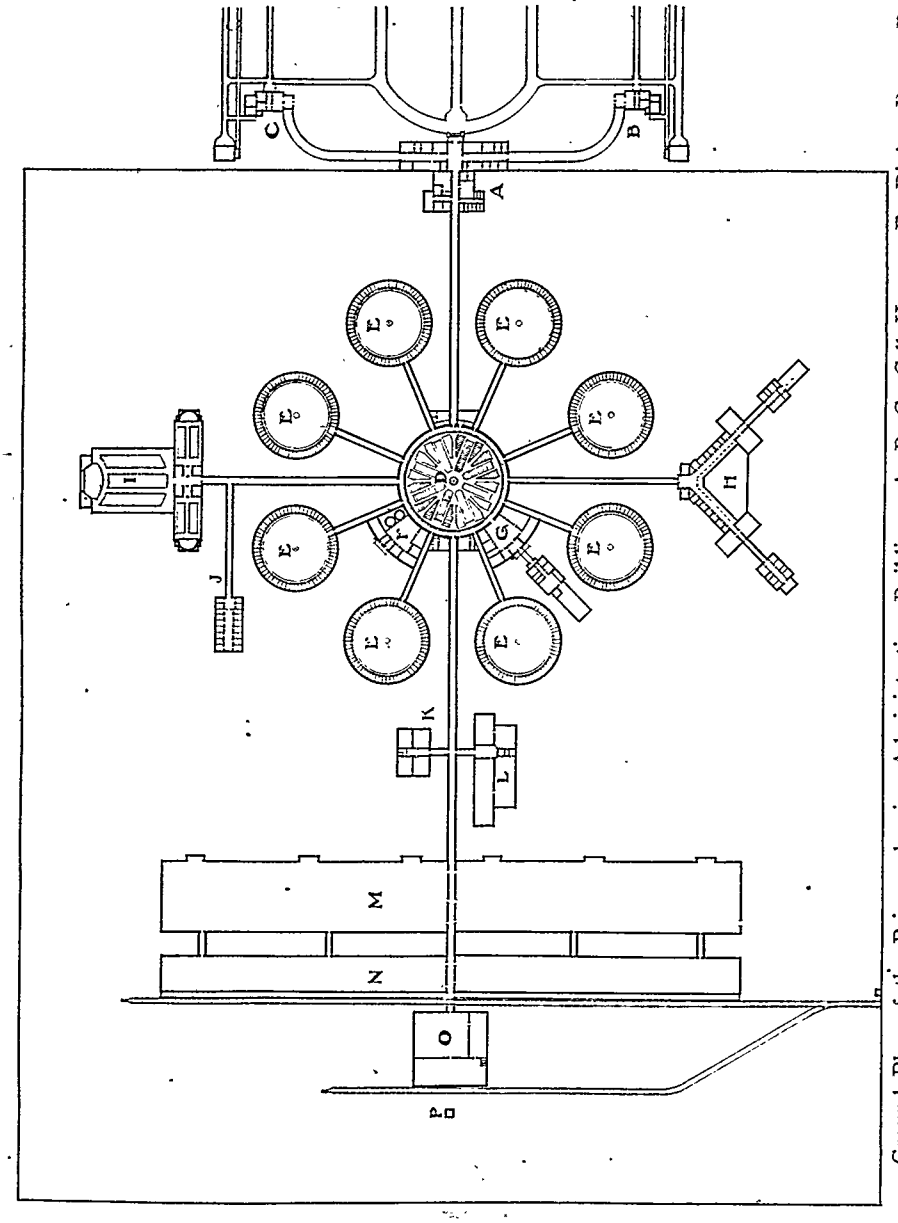
In Europe the prevailing construction is exactly the opposite of the foregoing. There the cells are built against the walls of the cell house. The corridor is in the middle of the house and each cell is a room by itself with a barred window leading to the outside air.

The inside cell construction in the United States has been held to have several advantages, for the utility corridor mentioned above is an economical feature. The inside cells are considered as safer, furthermore, for the reason that the prisoner, in order to escape, must first go through the door, which is his window, then through the wall of the cell house, before he has reached the wall of the prison grounds. They are open, however, to serious criticism because of the limited amount of direct sunlight and fresh air which may be admitted into them. Again, since the cell doors are not solid, but are barred, it is obvious that one prisoner can readily by word of mouth communicate with others through a considerable portion of the cell house. Supervision in the case either of the inside or outside construction must be carried on through the patrolling of the corridors by a guard, who must make a regular beat before the cells. This gives no little opportunity to a clever prisoner to make an avenue of escape.

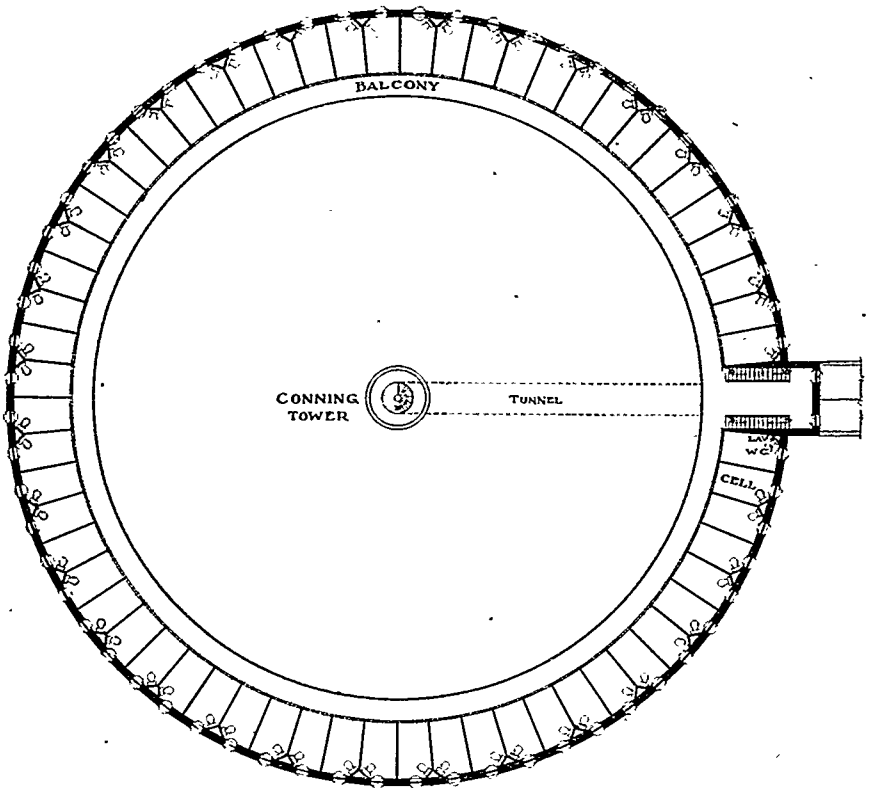
The plans devised by Mr. Zimmerman overcome these objections most completely. The cell house, as is represented in the cut, is circular. It will be about 120 feet in diameter and since the cells are against the cell house wall direct light and air are assured. Instead of having an open door of steel bars, through which prisoners may easily communicate with one another, heavy glass



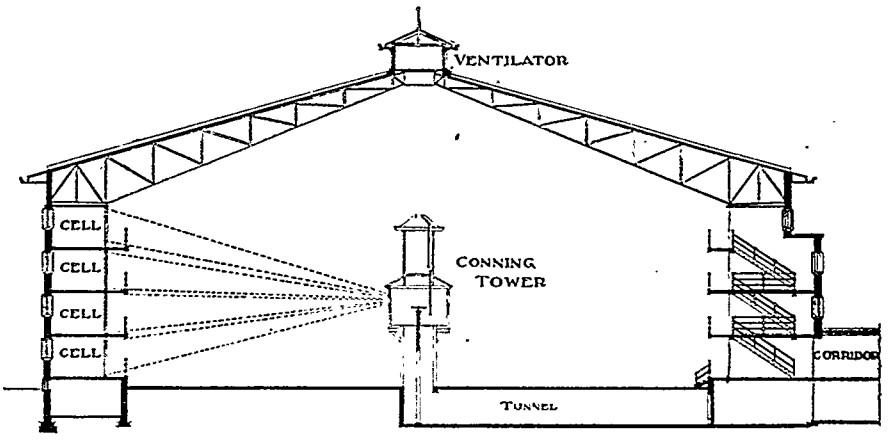
Bird's-Eye View of the Prison Plan. Courtesy of the Chicago *Tribune*.



Ground Plan of the Prison, showing Administration Buildings, A, B, C; Cell Houses, E; Dining Room, D; Shops, M, N; School, Chapel, Laundry, Hospital, Kitchen, etc.



Ground Plan of Cell House.



Vertical Section of Cell House.

will be fitted into the open spaces among these bars, so that the cell is a completely closed room. Each one will contain its own complete lavatory, and is ventilated both by means of the outside window and a pipe running through the roof. A full view of every cell in this circular unit may be had from a steel shaft enclosing a circular stairway in the center of the cell house. This stairway reaches as high as the highest tier of cells. The shaft is bullet-proof and at intervals from the top to the bottom slits are provided so that an observer upon the central stairway within the shaft can see clearly what is going on in any one of the 200 or 250 cells in the house, provided they are arranged as in the Illinois plans, in four tiers. Entrance to this shaft may be had only through a tunnel which communicates directly with the administration building, which is outside the circle occupied by the cell houses. It is obvious, therefore, that a single armed guard from his position in this shaft, could readily control a mob, however fully armed it might be.

One objection that has been made to the plan is that through the glass doors any one prisoner from his cell is distinctly visible to practically all other convicts in the unit. Such an objection, as Mr. Zimmerman has pointed out, is easily overcome by the placing of as many movable partitions coincident with the radii of the cell house as may be desired. Two such partitions intersecting each other at right angles in the center of the house would effectually prevent one prisoner from seeing another, but at the same time the observer in his central shaft would not be prevented from distinctly seeing each prisoner in his cell.

The movable partition feature adapts itself nicely to the necessities of classification of prisoners. For that matter the general construction of the prison is adapted perfectly to this purpose. One cell house can be set apart for one class of offenders, another for another. It may be desirable to allow a certain class of convicts the privilege of seeing one another, in which case the partitions can be removed or so placed as to allow such an opportunity.

The guard in his shaft will have at his hand a complete system of levers, buttons, etc., controlled in such a way that at any time the locks of any or all of the doors in the cell house may be fastened or unfastened and the lights in any or all of the cells may be dimmed or increased at will.

A circular prison was built in 1901 in Haarlem, Holland, which accommodates about 400 prisoners. It, however, has wooden doors, for each cell, which renders the supervision of the inmate no more easy than in the type of prison which prevails in the United States. The glass doors provided for in the Illinois plans are a novel feature. The circular unit form of construction, the central stairway with its outlook, the partitions providing both for obstruction of vision and for the classification of prisoners, and the elimination also of a number of attendants who otherwise would be needed for supervision are additional novelties in the present plans.

The dining room is situated on the ground floor at the center of the circle occupied by the cell houses. Within it is a central shaft like that which occupies the center of each of the houses. It commands the approaches from the units to the dining room, and also the avenues leading outward to the laundry, and to other shops outside the circle.

Mr. Zimmerman believes that the cost of construction of a prison built upon

his plans would be about 10 per cent less than that of the ordniary prison. This is due in part to the fact that in front of each cell in this circular arrangement there is little "dead space." That is to say, each cell occupies a part of a sector of a circle instead of a rectangular block in a large rectangular formation.

R. H. G.

The Annual Prison Congress.—A good index to the spirit of progress in the treatment of the criminal is found in the annual meetings of the American Prison Association. The writer has attended nearly every prison congress for a dozen years. During that time, not only has there been a marked change in the personnel of the delegates, but the viewpoint and character of subjects discussed are different.

Formerly, one heard much concerning the physical equipment of prisons, and methods of keeping and controlling prisoners. Now, these matters of detail are largely lost sight of in the greater and more farreaching purpose to inaugurate an enlightened system for the correction of the offender. In many respects the recent meeting in Baltimore registers the high water mark in this respect. Subjects that were avoided ten years ago, such as the parole of life prisoners, and the prison labor problem, were openly and frankly discussed. And always the trend of the debate favored the making of men rather than money, and the highest welfare of society through saving the individual, rather than any shibboleth of punishment, much less retaliation.

The American Prison Association, as an organization, has always stood for the principle of reform rather than punishment. It has held reformation as the right means to conserve the best interests of society. Its founders were fully a generation ahead of their time. Now, it would have been difficult for the younger delegates to realize that it had taken the Association forty years to show the fallacy of revenge, and the weakness of mere punishment as a deterent.

As a matter of fact, the general public is evidently not fully convinced of this, even yet. This was shown by a resolution, unanimously passed by the Association, re-affirming its contention for the principle of reformation. It seems that various press reports had held that recent riots in various prisons were probably due to too great leniency, and the discarding of the severest forms of punishment. The resolution asserted the belief of the congress that such disorders were due rather to inefficiency and poorly paid supervision, and the survival of barbarous methods in the midst of an awakened conscience on the righteousness of humane treatment. The congress prides itself on passing few but important resolutions. Only one other was proposed and passed, and it appealed to congress to sanction a measure which has been proposed by the attorney general, providing for the parole, after a reasonable term, of federal life prisoners. Such a law has already been enacted in a number of the states, and has proven to be, not only a boon to many worthy beneficiaries, but a blessing to the states.

The question of contract prison labor was formerly touched upon somewhat gingerly, due chiefly to the fairly equal division of opinion. The recent trend, however, has apparently been decidedly in the direction of disapproval. The movement to abolish convict contract labor in the various states has advanced in a most surprising way. State after state has joined the ranks of those which

have adopted some form of state employment for prisoners. Those who read papers advocating the latter method seemed to have the better of the argument. Prison administrators, who had had experience with both methods, seemed to feel that the change toward state employment is inevitable and permanent. The whole spirit of the movement was significantly summarized by Dr. J. A. Leonard, Superintendent of the Mansfield Reformatory, when he said, "It is psychic, my friends: No matter how high-minded the contractor may be, (and those I have dealt with have been all that could be desired), there is nevertheless the feeling in the mind of the inmate that he is being exploited by private interests, and this feeling does not conduce to reformaiton."

The farm colony idea for the care of misdemeanants, and other outdoor work on the "honor system" came in for due attention in the discussion of the congress. It is recognized, however, that the former plan is suited chiefly to the treatment of minor offenders, and that the latter is no new thing. Many prison officials have long had men on the honor roll of trusties and seldom has this confidence been violated. The parole system has taught us that the percentage of prisoners who can be trusted is larger than we had supposed. The Mansfield Reformatory has had as high as two hundred and twenty-five men working on its farm, and the Jackson, Mich., prison had fifty or more prisoners including life men, living day and night on the state farm throughout the summer. Dr. Gilmour, warden at Toronto, has said it would be easier to pick out the men he could not trust. There is a growing feeling, nevertheless, that is not desirable to work a large number of convicts on public roads in populated districts; that such work is not practicable in all climates, and that the herding of men together in barracks is bad.

A subject of far greater promise, and more prominent in the discussions of this congress than ever before, has to do with the actual character of the inmates of correctional institutions. Wider recognition is given to the physical and mental variations found among the men behind the bars. Several discriminating studies had been made and were presented to the congress. The physician of the Massachusetts Reformatory and Dr. Peyton, Supt. of the Indiana Reformatory, in their papers, revealed the injustice of holding all violators of the law to the same degree of responsibility. These speakers, and Dr. Goddard of New Jersey in a brillant paper, expressed their belief that at least twenty-five per cent of offenders are mental defectives. One could not escape the conclusion from these deductions that any wholesale method of dealing with criminals is illogical, useless and harmful. They pointed rather to the necessity of a closer study of the individual offender, both before and after conviction, and to the prescribing of treatment suitable for each case. Fortunately the promising movement in this direction has begun, notably by Dr. Healy in the Juvenile Court of Chicago, and by the establishing of a psychological laboratory in the reformatory at Jeffersonville, Indiana, and at Raway, New Jersey.

Thus the reformatory movement seems to find its chief basis in a better understanding of individual shortcomings and possibilities. A reference to the Elmira Reformatory method of trade training without direct profit to the state, brought the statement from Mr. Scott, Superintendent of the New York prisons, "that the method had fully justified itself in the making of good citizens, and will be continued." The whole spirit of the congress was more than ever a

reflection from the atmosphere of those institutions which have fully adopted modern methods of treatment and training. The natural fruitage is shown in the new born hope and higher aspirations of all improvable offenders.

F. EMORY LYON,
Superintendent of Central Howard Association, Chicago.

Burrell Oates Hanged at Last.—Readers of Mr. Crowell's article in the JOURNAL for September, 1912, on the case of Burrell Oates, will be interested in the following item from Waxahachie, Texas:

"Burrell Oates, a negro, who was hanged here to-day, was convicted of having murdered Sol Aronoff, a Dallas shopkeeper, eight years ago. Oates, without money or influential friends, obtained seven trials, and his case was responsible for two changes in Texas' statutes.

"Oates' fight for life was made all the more remarkable by the fact that each of the seven trial juries found him guilty of murder, and six of them condmned him to death. The other jury, being unable to agree over the penalty, caused a mistrial, although declaring the negro's guilt.

"Technicalities and at times more serious legal errors have been used repeatedly to secure new trials for Oates. The sixth trial was declared void because the jury in writing its verdict inadvertently omitted the words "in first degree" in finding Oates guilty." J. H. W.

POLICE—IDENTIFICATION.

Report of the President of the International Association of Chiefs of Police.—Major Sylvester, President of the International Association of Chiefs of Police, might well congratulate that organization in his annual report for its educational work alone. The dissemination of knowledge of improved methods for doing police work is of far greater importance than the occasional apprehension of some criminal for another department. It is more especially the case with police administration because of the lack of books and articles on the practical side of policing, for of fiction and generalizations there has always been an abundance. Students of municipal affairs have accumulated and published stores of knowledge on almost every phase of municipal government except that very important one, police. The Library of Congress does not contain a dozen useful works on this subject. That this lack of information is being realized at last is shown by the appointment of a Sheldon Fellow in Harvard University to devote his time to the study of police administrative methods in Europe and the United States. The International Association will for a long time be the best means of introducing new ideas.

The great growth of automobile traffic has brought several new problems into police administration. The most pressing difficulty is the complication of street traffic, but the hardest to combat is the automobile burglar and safe-breaker. The solution for this would seem to be in the extension of regular patrols into the rural districts which has long been needed for many other causes and has already been introduced to a small degree in some states as Pennsylvania. Such a patrol would almost necessarily have to be maintained by the state as it is in England, France and Germany, where its value has been fully demonstrated. The automobile, likewise, permits a small saving in the larger departments through the use of automobile patrol-wagons. Boston has recently installed one in its largest district. The operators declare that they

feel equal to covering all calls not only in their own, but in at least another large district as well. The superior speed of the automobile, its cleanliness, and its lower cost of operation need but little demonstration. The cheaper operation comes through the small cost for idle time as compared with keeping several horses and two or more wagons. During the hot summer weather many police horses are exhausted by the extraordinary demands made upon them, whereas the automobile would work as well in hot weather as in cold.

It is devoutly to be hoped with Major Sylvester that political exigencies will soon permit the passage of a sensible law for the restriction of immigration under the provisions of which it will be possible to exclude effectively the members of such societies as the Black Hand. The plundering of their more industrious fellow immigrants by these detestable criminals goes on steadily, silently, and to a far greater extent than most persons think. Police officials are aware of their depredations, but practically helpless because of the lack of testimony which will convict in the face of our safeguards to individual liberty. The insults and robberies are borne in silence either because of personal fear or the more horrible fear of danger to wives and daughters. No legislation could more truly protect and help the desirable immigrant than that which would permit effective dealing with these anarchistic parasites.

At another time last summer Major Sylvester said that one of the best methods of keeping a police force free from "graft" is to pay it well. In his address he follows this generalization still further. The work of a policeman will make a man who has been doing it for a long time unfit to pursue his old trade even if he could find an opening. With the prospect before him of an old age dependent wholly upon his savings, it is hardly more than natural that a man with opportunity at every turn and of the ethical standards of an ordinary policeman will become first a petty, and then a large "grafter," while police efficiency becomes a mere myth. The very obvious preventive recommended is to make ample provision for the retirement and pensioning of police officers. Such a provision as half pay after twenty years' service and compulsory retirement at the age of sixty-five would be a very great inducement to stop "grafting." Many cities have adopted a similar scheme, and as Major Sylvester said, it is most gratifying that the number is steadily increasing.

GEORGE H. MCCAFFREY, London, Eng.
(Sheldon Fellow, Harvard University.)

SOCIAL EVIL.

President Harris on the Social Evil in Chicago.—The following was prepared as an eight-minute address and was one of a list of five addresses delivered recently before the Sunday Evening Club in Orcehstra Hall, Chicago. The entire program was designed to arouse public sentiment on the subject of social vice as it prevails in Chicago. [Eds.]

"The woman seller in Chicago gathers an annual profit of $16,000,000, some say, and I think that estimate too small. Tonight, thousands of women are merchanting their bodies. A multitude of boys are planting the seeds of the Black Plague, the worst disease of civilization. And yet all prostitution is illegal. Can any statement be more astounding? Oh, yes. It is this: The great, rich, religious city of Chicago is doing nothing about it.

"If a community takes the position that vice cannot be cured and that nothing better is possible than to reduce its evils and to keep it out of sight, then there is much to be said for the Japanese method of complete segregation; but segregation in America is not such complete segregation. With us, it means toleration of an illegal business within vaguely defined districts which are occupied not only by vice but also for legitimate business purposes and for residence usually by a large number of the poorest and most helpless of the community. Such segregation is no remedy or even solution, but rather tends to interfere with progress towards a cure. If vice is to be tolerated, there is not much to choose between segregation and dispersion, but the disadvantage is on the side of segregation. If we hope to make real progress toward remedying the vice evils, then segregation is the worst method.

"Segregation is objectionable, because it is likely to be accepted as a remedy. A man who adopts it is like the one who saves his own loss by passing a counterfeit coin on another. It may be said that neither is dispersion a remedy, and truly; but dispersion incites that public to action while segregation favors neglect.

"Segregation is unfair to innocent and conscientious owners of property in the segregated district, for while it increases enormously the value of property used for disreputable purposes it depreciates the value of nearby property. This situation is a sore temptation to owners.

"Segregation is outrageously unfair to those poor, helpless people who must live in the immediate presence of the congregated vicious element. It is not at all a lovely thing that these helpless ones who cannot defend themselves, are left by the better element of the community to suffer the concentrated evils of vice conditions.

"Segregation by concentrating vice thrusts an unbearable burden of responsibility for the enforcement of the law upon the minimum number of city officers.

"The same concentration, while reducing the number to be tempted, enables vice to combine money and influence for the temptation and corruption of public officers.

"Segregation, by hiding vice from public view, deprives public opinion of its proper influence in restraint of vice and of its patrons, and upon the police who escape observation and through constant touch with vice come to tolerate it. It permits vice to flaunt itself, where it may be easily found by the idle and curious, with the least risk of detection; and it leads to the seduction of numberless curious boys, who are weak rather than bad.

"Segregation favors the development of vice as a business under its captains of industry.

"For these and other reasons there is not time to mention, it seems to me there is hope for improvement of the vice situation if the policy of segregation be given up. Dispersion will compel the community to face the evil and will teach it the facts. It may be said, the city will not tolerate vice in the better quarters. No, and therein hope lies. If the community is to tolerate the vice plague, then it is fair that the community in general share the disadvantages. It is mean for the strong to use their strength only to put the evil over upon the weak who can do nothing. A general distribution of the haunts

of vice throughout the city would soon show how fallacious is the common claim that any real progress toward extermination is impossible.

"If vice is to be cured, there must be, first, publicity and education, then honest, scientific and courageous study of the problem, together with patient administrative experiments. Harsh methods and occasional persecution of unfortunate, and if you please, wicked women, will accomplish little. The community must recognize its responsibility to cure a community evil, must make laws that can be enforced, and must put an end to the open and well-known ignoring of the law, by those responsible for its enforcement.

"There are some things we can do at once. We know that one great avenue to vice is the disreputable dance hall. For those who use these halls, the community can provide decent opportunities for amusement of the kind they will use. Again, it is possible for a community which knows that many girls in the city are working for less than a living wage, to accept guardianship over them. Require every employer to register all girls employed at less than a specified minimum pay, and then let the city appoint public guardians who will in necessary cases furnish the assistance the family renders in many cases, helping them at the public expense, until they are able to care for themselves. In a country which is so generously devoted to the protection of labor, one need not apologize for asking public protection for that class of American labor most in need.

"Do you say I am preaching socialism? I don't care, if it means salvation. And I'll take this text from the words of a master: 'Bear ye one another's burdens.'"

ABRAM W. HARRIS,

President of Northwestern University; Member of the Chciago Vice Commission.

The American Vigilance Association.—The American Vigilance Association is the tangible evidence of determination on the part of several organizations in America to concentrate their energies in the fight against the white slave traffic. It is backed by practical business men of the east and west, and by some of the foremost men and women in educational and social work, who have consented to serve on its executive board, to lend their influence in the guidance of its policy, and to give their advice in the perfecting of the various departments of work. The president is David Starr Jordan; vice presidents, Cardinal Gibbons and Dean Sumner; treasurer, Charles L. Hutchinson of Chicago, and the executive secretary and general counsel, Clifford G. Roe. The executive board consists at the present time of the following members: Clifford W. Barnes, chairman; John G. Shedd, Julius Rosenwald, Henry F. Crowell, A. C. Bartlett and Jane Addams, all of Chicago; Grace H. Dodge and James Bronson Reynolds, of New York; Dr. O. Edward Janney, of Baltimore; Wallace Simmons, of St. Louis; Charles Bentley, of San Francisco; Henry J. Dannenbaum, of Houston.

The purpose of the association is "To suppress and prevent commercialized vice and to promote the highest standard of public and private morals. To accomplish this purpose, the association shall strive for the constant, persistent and absolute repression of prostitution and the passage and enforcement of laws, for the rescue and protection of girls and women, for the promotion of knowledge of the social evil, its effects and results, and for the circulation of

the best literature regarding it." This is proof that there is to be no compromise with methods of regulating vice by segregation and police rules; and indicates that law enforcement will be insisted upon in every community where prostitution has fastened itself securely. The house of prostitution is the market place where young girls are ruined, and where they are often sold for cash—as such, the disorderly house as an institution must go.

If the white slave traffic is to be wiped out—and it will be—the *demand* must be checked by education and by an insistent appeal to the conscience of men that will bring finally a single standard of morals; the *supply* must also be checked by education—by better industrial conditions for working girls; better recreation facilities, and decent housing will have their effect on both the supply and demand. The owner of the house, the keeper, the cadet and the procurers must all be attacked at the same time relentlessly; law enforcement, investigation, protection and education must be pursued at the same time, so that there will be effected a gradual closing in on the promoters of the traffic in women. The Vigilance Association believes it has a business organization that can do this thing.

The plan of campaign is suggested by the division of the work into the following departments:

Organization and promotion; Finance; Investigation; Legislation and law enforcement; International co-operation; Rescue and protection; Education; Library and editorial.

At the head of each of these departments will be an expert, who is acknowledged to be an authority in his field; so-called directors will do the active work in carrying out the policy and plans drawn up in consultation with the chairman. The general secretary will have general supervision and direction of the activities in all the departments, and will have at hand the threads of the three offices, which are to be situated in San Francisco, Chicago (central office) and New York (library and editorial department); the Department of Legislation and Law Enforcement will have an office in Washington, D. C.

Through its Department of Investigation, which is directed by George J. Kneeland, the association will stand ready to be of assistance to cities which are aroused to conditions and want trained investigators to go over the ground thoroughly. Such an investigation will mean a study of state laws and city ordinances relating to the moral and physical life of the community, a study of the machinery of government responsible for the enforcement of these laws and ordinances such as the Courts, Board of Aldermen, Department of Health and Police Department, and third, a field investigation of existing conditions.

There are any number of laws for the suppression of the social evil in every state in the Union. The owner and agent of property used for immoral purposes, the keepers of disorderly houses, the inmates, panders, procurers and cadets, the disorderly saloons and resorts—are all under the ban of the law, but as Mr. Kneeland says: "The ignorance of these laws and ordinances on the part of many good citizens is appalling, while the knowledge of them displayed by the vicious and those who defend them in the courts is amazing."

It is perfectly useless, of course, to be moral on the statute books, and unmoral or indifferent in enforcing the laws that indicate a desire on someone's part for decency. A half-hearted moral feeling and a great deal of hypocrisy on the part of a legislature,—some of whose members have been actually proved

to be engaged in the traffic in women,—has not added anything to encourage the few who have to come in contact with the rottenness of political graft.

Following the completion of the investigation will come publicity, and the co-operation of the citizens whose aid will be offered without doubt when the situation is seen by the light of day. It will probably be desirable in many cases to form committees or associations of which the best men and women interested in civic affairs shall be members, so that the recommendations will with certainty be acted upon.

The Department of Legislation and Law Enforcement will make a comprehensive study of existing laws throughout this country and abroad; in fact, this is now well under way. Then tried and effective legislation will be recommended to all states, and the law enforcement work will be pushed to the limit. The chairman of this department is James Bronson Reynolds.

The educational problem which means, of course, education with reference to sex, is a difficult one and will be worked out slowly to produce the best methods of teaching sex hygiene. Courses should be scientifically planned for normal schools, so that yearly trained teachers may be graduated who are alive to the vital importance of the subject. Simple outlines of study should be available so that groups of different characters will have a guide as to the best way of approach, which authorities have devised. It is a dangerous subject to experiment with, and that is probably the reason why people have left the most important function of the body severely alone. Scientific knowledge, judgment, intuition—each are needed in turn—the last two must be inborn to develop, but the first can be given to all those who are willing to study. With this in mind, the Vigilance Association is expecting to give a course for teachers at the eastern office in July, so that the great number of students who come into New York for summer school work may have this opportunity for training. They will have at their disposal a well equipped library, which brings us to the library and editorial department.

The library classification includes all those subjects which are closely related to any study of prostitution and the white slave traffic, its causes, results and means of prevention. It has been collecting for the last three years (as part of the work of the National Vigilance Committee) material in the form of books, pamphlets, leaflets, papers and newspaper clippings from all over the country, and has a complete file of laws (concerning offences vs. chastity), which are kept up to date. An outline of the classification is given below in order that the point of view and resources of the library may be made clear:

PROSTITUTION (Segregation, State Regulation, White Slave Traffic).

Recreation; Dance Halls, Amusement Parks, Playgrounds, etc.

Economics; Wages, Women, Labor, Children, Employment Bureaus, etc.

Housing; Bad Conditions in Tenements, Congestion, etc.

Family Ethics; Marriage, Divorce, etc., Illegitimacy.

Diseases (Venereal); Feeble-mindedness, Degeneracy, Insanity, etc., Hospitals.

Immigration; Protection of Immigrants, Dangers of Transportation, etc.

Liquor Question; Saloons, Raines Law Hotels, Dance Halls, Disorderly Houses, etc.

Criminal Law; Federal and State, City Ordinances, Foreign Laws and Ordinances, District Attorneys Reports of: Chiefs of Police, Magistrates' Courts.

Juvenile Courts, White Slave Cases, Decisions in Disorderly House Cases, Record of Convictions in White Slave Cases throughout the country.

Police; Control of Prostitution, Methods, etc., Magistrates' Courts, Probation, etc.

Custodial Cars; Penal and Reformatory Institutions, Houses of Detention, etc., State Farms for Women.

EDUCATION WITH REFERENCE TO SEX; Biology (The Science of Life).

Nature Study, etc.; Eugenics (Science dealing with all influences that improve the inborn qualities of a race), Heredity, etc.

The plan of work is, in brief, this:

First. The collection of material.

Second. Sifting material, preparing recommended lists of books and bibliographies, inducing libraries in this country to put the books recommended on their shelves; acting as agency for the best books.

Third. Carrying on inquiries, such as: the number of schools teaching sex hygiene, their methods of teaching; number of cities which have segregated districts (completed); relation between prostitution and low wages (now being carried on); etc.

Fourth. Acting as a Bureau of Information on any facts in connection with our work. All inquiries will be promptly attended to.

Fifth. Working out a means of communication whereby we may be informed concerning the efforts of other organizations in the United States and abroad.

The library expects to stand for the best literature in education with reference to sex, and as many people are turning to this field as a good one financially, there is a great mass of worthless stuff in circulation. An increasing demand for material along this line creates an immediate necessity for substituting the good for the bad.

The Department of International Co-operation will continue the relationship between the organizations in foreign countries and the American Vigilance Association. In eighteen countries there are Vigilance Associations or Committees, which are affiliated through the International Bureau in London. It will be the business of this Department to keep in close touch with our own government, which is doing good work on the white slave traffic through its Department of Justice, Bureau of Investigation and Department of Commerce and Labor, Bureau of Immigration. It will answer the numerous inquiries that come from abroad in regard to situations which foreign girls expect to enter in some capacity. Almost always they are legitimate, but many times it has been found on investigation that a girl would have gone into a disorderly resort, or saloon, if she had not been safeguarded in this way.

Through all the departments of work runs the spirit of co-operation, and we wish to extend this policy beyond our own organization to others which are now in the field. It is not the purpose of the Vigilance Association to absorb the numerous small societies with the same interests, but to push the work whenever it is possible, to act promptly and to make it clear that the American Vigilance Association is a growing force to be reckoned with.

CLIFFORD G. ROE, Executive Secretary and General Counsel.