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Proceedings of the Fifth Annual Meeting of the Institute

PROCEEDINGS OF THE FIFTH ANNUAL MEETING OF THE INSTITUTE.

THE EDITORS.

The fifth annual meeting of the Institute of Criminal Law and Criminology was held in the Windsor Hotel, Montreal, on September 3 and 4, 1913, with the President, Justice Orrin N. Carter, of the Supreme Court of Illinois, in the chair.

President Kellogg, of the American Bar Association, made a brief address of welcome on behalf of the Association. He said in part:

"The field of your investigation and of your study is as boundless as the activities of the human race. There is no field greater, more important, or which could have a greater effect upon humanity and civilization than the study which you are engaged in. Some wise man once said that the line of demarcation between genius and insanity was impossible to make out, and there is a great deal of truth in it; at least it is an illustration of the truth in the handling of criminals as well as the framing of criminal law that there should be a scientific study and appreciation of the principles involved and which should be applied. You have a great field. I can only say that so far as the American Bar Association is concerned; it welcomes your work, and will be glad to aid you in any way that is possible."

The President then introduced Mr. J. C. Walsh, of the Montreal Press, who extended a welcome in the name of the citizens of Montreal. He spoke in part as follows:

"It is rather unfortunate that the stay of this body is not longer because I have been assured and I do myself believe that there is as fine a laboratory of social studies to be found in Montreal as exists on the continent. We are still at the beginning of many lines of undertaking which have been carried some distance further in other and larger cities, but we are beginning and perhaps even in this work if it is left in the hands in which I now see it, sensible progress may be made which will be of use to your larger and more general body. I do not know, rather, I have been puzzled to know why a journalist should be allowed to be here on this occasion. I suppose it is in some measure because it is realized that crime is part of the every day diet of the newspaper. Crime is no stranger to us. The only trouble about it is that in time one gets into the somewhat depressed state of mind that perhaps we are all potentially criminals. It is impressed more, perhaps, upon a newspaper man than upon others. There used to be a man of the world who was a Chief Justice in Montreal, and who in his moments of confidence divided mankind into two classes. Most of us do that. But he divided them into the convicted and the unconvicted, and he spoke out of the large experience of a man of the world and a judge of the court. We in our business are no longer startled when a lawyer turns out to be a highly accomplished thief or when a doctor, whose standing is high in the community, turns out to be an admirable sort of murderer. We are not at all put about when we learn as we are likely to do at any moment that the man who stood highest in the business community has robbed his bank. There are no tests apparently that can be applied by which under all events we are to be guided, and so it almost comes sometimes that one has to wonder whether we are not inverting our propositions and whether it is not that crime is the normal state and that it is only the lucky of us who have managed to escape out of it.

"Personally I have often been struck, as I am sure every one who has looked at the facts of crime in a city has been, by such developments as

come, for example, with the influx of foreign population. We are rather brusque with our Italian fellow citizens, for example, and yet, we know very well if we go back just a little that the same standards which call for the knife in the hand of the man that is working in the street was a standard which ruled some of the greatest of the civilizations of the world not long ago. We speak and we think in our day of crime as the accident. We forget that not very long ago as we measure time in the human race, the inventories which passed when one great house that sold its property to another always began with the ropes which hang over the front door to apply the cord. Crime was the regular order of the day. The heads of the great houses preserved their lives, their assets, their fortunes, by the aid of criminals, who were grouped in hundreds in their court yards and in their sheds. At the same time in its local application it has seemed to me that the city is essentially the forcing bed of crime. The country boy comes to the city without a criminal instinct. It is in the city in its present environments, where the manufacturing industry has made such claims upon the use of the city and the people that crime seems to find its hotbed in surroundings that begin with vice. No one can disguise it from himself that the conditions of the city are different from the conditions in the country, and when you get to the bottom of what the difficulty is I think you will generally find that the beginnings of vice are the forerunners of crime. The beginnings of vice are in the denial to the growing boy and to the growing girl of those facilities for the expansion and the joyousness of their nature, which are to be found in the great country under the blue skies, the denial of the exercise of the divine right of joyousness, followed by the repression and by the abnormal stimulation which is furnished by those who are willing and ready to commercialize these difficulties. The vice precedes and crime follows. It used to be said fifteen years ago in Montreal that we had little crime here but much vice. Today we have both the crime and vice, and you cannot find in many districts a mile square in this city a place apart from the street where the growing boy or the growing girl can put his or her foot to play.

"Mr. Chairman, from the point of view of the newspaper this development of crime in the city under a false, abnormal condition is the phase of criminology which most appeals to us, and I venture to hope that those who take it up from every point of view, from the point of view of the doctor and the lawyer, will not forget that when they come to propose remedies.

"So sir, on behalf of the people who in this city as in other cities suffer from these arbitrary conditions, we would again bid welcome to our city those who can devote themselves, their talents and their energies, to finding out what is wrong and to indicating the remedies for what is wrong."

This was followed by the address of the President, which is published elsewhere in this issue. Mr. Moorfield Storey then delivered the annual address, which is published in this number also.

After the Committees on Nominations and on Co-operation with Other Societies, respectively, had reported, President Carter introduced Mr. Justice William Renwick Riddell, of the Supreme Court of Ontario. When he had spoken the Institute adjourned for the day.

On the following day the Institute convened at 9 a. m., and after some preliminary announcements Prof. Edwin R. Keedy, of the Northwestern University School of Law, and chairman of the Institute Committee on Insanity and Criminal Responsibility, reported orally for his committee. The report was intended to be one of progress. It is the

intention of the committee to make a formal report a year later. Professor Keedy spoke as follows:

"What I propose to do is to outline briefly the work that has been done by the committee on insanity and criminal responsibility and refer to the particular problems with which the committee has been confronted, and I shall be very glad to have any discussion by members of the Institute with reference to those problems. It was three years ago, in 1910, at the meeting in Washington, D. C., that this committee was appointed, and the purpose in creating the committee was this: to bring together members of both the medical and the legal professions, in order that by a co-operation between those two groups a plan might be adopted which should meet with the approval of all persons concerned. In order that every point of view might be brought to bear upon the subject under consideration we have on our committee what may be termed the academic physicians and the practicing physicians, and we have the academic lawyers and the lawyers in active practice.

"The first report, which was the most lengthy one, was presented at the meeting in Boston two years ago, and at that time a complete tentative plan for dealing with insanity in criminal cases was submitted in statutory form. Briefly it was this: that the underlying theory of insanity in criminal cases so far as the test of responsibility is concerned is not that insanity *per se* is a defense, and not that insanity should never be a defense, but that mental derangement should be defense whenever the mental condition of a person at the time of a commission of the criminal act was such that he did not have the necessary state of mind which is required by law to accompany the act in order to make a crime. The question is, does the man have the particular state of mind which is required by law to accompany the act to make this act the crime with which he is charged. If the jury finds that he has not such a state of mind then they are to return a verdict that the defendant is not guilty of the crime charged by reason of his mental derangement.

"The second section of the statute provided that wherever such a verdict is returned the accused shall be remanded into the custody of the proper officer, and that there then shall be an inquisition to determine what was his particular state of mind at the time of the inquiry, because what is most important in this matter of insanity in criminal cases is a recognition of the different effects which insanity at the time of the commission of the act has from the insanity at the time of the trial or insanity following the trial. That was considered by the committee to be the difficulty with the English statute, in that it fails to recognize any distinction between insanity at the time of the commission of the wrongful act and insanity at the time of the commitment after the trial. Just a word to show how great is that difference. If a man was insane at the time of the commission of the act, so that he did not have the state of mind which is required to make that act a crime, even though he may be perfectly sane at the time of his trial, he should not be convicted for that crime because although it was a wrongful act the criminal mental state was absent. Now, under the English statute such a man would be committed to asylum to await the king's pleasure. That would mean sending to the asylum a man who is no longer insane. Now, the plan which we proposed would recognize the distinction already referred to and the result would be that a man who was insane, so as not to be responsible at the time of the commission of the act, but who is perfectly sane at the time of the trial and found by the physicians to be so sane that he may be released without any danger to the health or safety of the community would be released; whereas, on the other hand if a man was sane at the time of the commission of the crime, but has since become insane, so that although we might say, and correctly say, that man is a criminal and has committed a crime, yet by reason of his present condition, he should not be put to death nor be shut up in the penitentiary, but he is a man who should be confined in a hospital for purposes of treatment. This section was followed by a provision that where a man had been sent to the hospital for purposes of treatment it should be found that he has recovered his sanity he should be released. This result should follow be-

cause he had been sent to the asylum or hospital, not for purposes of punishment, but for purposes of treatment only, and since he has responded to the treatment, and is in the opinion of competent physicians no longer a menace to the public he should be released as a free man.

"We tried also to reach the difficult question of *habeas corpus*. There have been instances in New York and elsewhere where a man had been confined to an asylum or hospital, and there have been innumerable attempts made to secure his release by *habeas corpus*. Writ after writ has been sued out and the whole investigation has had to be gone over again until as some one once said, it was continued until he was able to find a soft hearted judge in the jurisdiction who would secure his release. So we made a tentative proposal that whenever a man had once had the question of his sanity raised on a writ of *habeas corpus* that no judge of competent jurisdiction should issue a second writ until the person applying for the writ had made out a case of reasonable grounds for sanity, and we found sufficient precedents in the common law to warrant that without any change in our constitution. The foregoing was in brief the tentative proposal which was made two years ago, and there was rather elaborate discussion at the meeting in Boston, and discussion through the press and the periodicals, and on the whole that discussion was favorable.

"After presenting the tentative plan we found that it would be inadvisable to advocate finally any proposals before we were informed as to every proposal which had been made before, and as to every system which was in existence in our country; so this past year the committee has published a report consisting of a compilation of all the statutes of all the states of the United States, so that we are able to say with certainty what is the law existing in any particular jurisdiction.

"The committee of the Institute has had what might be termed a controversy with the committee of the New York State Bar Association. In 1909 following the Thaw case the New York committee made the redical suggestion that insanity should no longer be a defense, that no matter what the man's state of mind he should be proceeded with as though he were perfectly sane. This suggestion was later withdrawn and was followed by a proposal very similar to the English statute, with this difference, however; that the New York committee proposed that whenever a jury returned a verdict that the defendant had been insane at the time of the commission of the wrongful act the judge should then sentence the man to the asylum for a term of years equal to what he would have served in the penitentiary had he been sane at the time of the commission of the crime. That proposal failed to recognize that commitment to the asylum for purposes of treatment and to the penitentiary for purposes of punishment are different. Under this proposal a perfectly sane man might be sent to a hospital for a fixed term of years, and a person permanently insane would be released from the hospital at the end of a fixed term of years although his condition was the same as when he entered the hospital.

"During the three years that our committee has been in existence we have not succeeded in reaching an agreement. All of the committee with the exception of two are in favor of the general proposal. One of the men who is opposed to it is a leading psychiatrist, the other is a prominent legal practitioner. The first is opposed to it because he considers it too conservative, the other because he considers it too radical. It is hoped that an agreement can be reached during the present year.

"There is one other point that I might add here. The different attitudes of the medical profession are evident clear through the history of the development of the law of insanity in criminal cases. Physicians have been extremely eager to have the law accept as a finality the prevailing idea and theory of insanity. In fact, that was done when the judges of the King's Bench Division reported to the House of Lords in McNaghten's case. The then existing medical theory of insanity was crystallized into a rule of law. It was perfectly good at the time it was pronounced, but it has since become very bad, as the views have changed; and it is very difficult to get the medical profession to realize that the law cannot change as readily as a medical theory can. Some physicians

today are very insistent that we legislate their present theories into propositions of law. On the other hand, many lawyers hesitate to incorporate new views into the laws, although those views have been established."

THE PRESIDENT: "Prof. Keedy's committee published a report that they made two years ago of the collection of the various statutes on the care and treatment of the insane or trial of the insane in the various states. Copies of that report can be obtained by leaving your name at the desk with the Secretary.

"Mr. Leavitt, of the New York State Committee is here. I think it would be entirely proper to hear from Mr. Leavitt for a few moments on their suggestion as to what they want in practice in insane cases."

MR. LEAVITT: "Mr. Chairman and Gentlemen—It is very interesting to me to find that Professor Keedy's line of work, although it may result in different conclusions, has been carried on in the same way that our committee work has been done, and we are endeavoring before we present any concrete bill to the legislature for enactment to have the fullest discussion and reach not a half baked bill but a well considered one which can meet objections after it is enacted on the statute book.

"Now we have proceeded from this point of view: that probably 90 or 95 per cent of insane persons do not develop criminal tendencies, and when I use the words 'do not develop criminal tendencies,' I am using a phrase which has not struck you probably as incorporated and yet which is incorporated under the definition of insanity, because it is always assumed, and Prof. Keedy assumed it, that the insane man cannot commit crime, and therefore, you have no right to say that an insane man developed criminal tendencies. Our committee's name is the committee on the commitment and discharge of the criminal insane. How can there be such a thing as a criminal insane man under existing definitions? We have proceeded along this line: that the man who commits an act of injury to society, whether it be murder, forgery or anything else, is one who has thereby proved himself to be dangerous to society, and that society must protect itself, and that society's right to punish anyone for infraction of its laws is the only reason for such action; that society has no right to punish the individual for reformation; that is the province of the Almighty; society's only basis for proceeding against any criminal is self protection. Now, the man who commits a crime proves himself thereby to be an enemy of society, and the wrong done to society by the murderer who kills one of his fellow beings is just as great. The injury is just the same, whether that man is insane or sane, and society must protect itself against the act of the insane man just as much as against the act of the sane man. Therefore, it becomes utterly immaterial to decide the intent with which that person committed his act. Society must protect itself. I am not talking about the case of justifiable or excusable homicide. Where one person kills another with intent to kill him the law holds that to be murder. Now, the insane man has just as much intent to kill as the sane man, and the only problem for society is, what shall be done with the man who has done that deed? That is the problem. The trouble with us now is that we are trying to solve two problems in one inquiry. The problem whether the man did the deed with the intent to do it is one thing. That problem can be determined without regard to whether he is sane or insane. What shall be done with that man after you determine that he did it is another problem. Then comes up the question of sanity or insanity. With that point in view our committee, for the purpose of raising discussion, and only for discussion, suggested in a phrase which attracted attention, that insanity be done away with as a defense to an indictment for crime, but not with the idea of having all the medical consequences follow from that mere bald statement. We suggested it merely for discussion. We said we did not dare to propose such things; we did not even convince ourselves. A year afterwards we discovered the English law, which was not known to our committee at the time. The law of England for thirty odd years has provided that if on a trial of indictment for crime the defense

should prove insanity at the time of the commission of the offense or use that as a defense, that the jury should return or might return a verdict of 'guilty, but insane.' We brought that to attention in our second report and we are now discussing it.

"The difference between a verdict of not guilty by reason of insanity and of guilty but insane will be obvious to every lawyer. The difference in fact is not obvious to any lawyer or any layman. The layman would say naturally, what is the difference between a verdict of guilty but insane and a verdict of guilty, but not guilty by reason of insanity; they both mean the same thing, namely, that the man did the act of murder but was insane at the time. The legal effect is different. In the one case the man who is found not guilty but insane is entitled under the constitution to the right to his liberty the moment he regains his sanity, and hence you have the scandal which has now come across the border into this community and is as startling to the bar and medical profession here as it has already been on our own side of the line. You cannot do away with scandals of that sort so long as you have your present system of drawing a distinction between insanity at the time of the commission of the act and insanity at the time of the trial, already existing in the law of New York, and in other jurisdictions. It has not done away with this trouble. If you have a verdict of guilty but insane, then a man cannot get out on any plea of regained sanity afterwards—"

THE PRESIDENT: "You say that is the English form?"

MR. LEAVITT: "That has been the English form for thirty odd years; 'guilty, but insane,' and then the man is sentenced to an asylum during His Majesty's pleasure and His Majesty never exercises his pleasure until the medical fraternity certifies that he is safe to go at large and will not commit any other similar act. The more I consider this the more I am satisfied that an act of that sort will go to the root of the scandals under which we are suffering, without one single bit of injustice to the unfortunate man who can be treated kindly and restored to sanity in an insane asylum under the medical care of the state.

"Now, what earthly objection is there to it? Why should the man who has been insane once be entitled to his freedom? If he has once demonstrated that he is an enemy to society by taking human life, who can say that that will not recur? Why should he, having taken life, whether sane or insane, be allowed to go at large and endanger the community again? If he is sane he is restrained of his liberty by a sentence for a definite time. If he is insane, let him be restrained of his liberty until the governor of the state or some pardoning board shall be satisfied that it is proper to set him at large, and then you will have done away with all these scandals, because when a man is indicted for a crime and he is put to his election whether to plead insanity or not as the motive, the incentive to retain unscrupulous experts to swear to insanity is gone, because his choice then is not between jail and liberty or the electric chair and liberty, but his choice is between incarceration in a jail or incarceration in an insane asylum."

THE PRESIDENT: "Is there any one else who desires to be heard on this subject?"

PROF. POTTS, of the University of Texas: "It may have been stated, but I did not quite catch it, what provision was made in the law of England or in the committee's plans for the man who was sane at the time of the commission of the crime but was insane at the time of the trial of the case?"

MR. LEAVITT: I have the law of England here. I can read it to you. That is the best way to answer it, if it is agreeable to you. It is the insanity act of 1883. They have a way in England of putting common sense into statutes and making them short:

> "'Where in any indictment or information any act or omission is charged against any person as an offense and it is given in evidence on the trial of said person for that offense that he was insane so as not to be responsible according to law for his actions at the time when the

act was done or omission made then if it appear to the jury before whom such person is tried he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him but was insane at the time he did the act or made the omission.'

"Then it follows simply that he shall be confined during His Majesty's pleasure. It does not provide for the case of a man sane at the time of the commission of the act and insane at the time of the trial."

PROF. POTTS: "That is the point I wanted to get at. How can that be handled?"

MR. LEAVITT: "Very, easily. He can be defended. If he is so insane at the time of the trial that his counsel cannot get the necessary evidence and it would be manifestly unjust for him to be called on as an insane man to answer to a plea when he alone could give an explanation, then upon counsel's representing that to the court the court could defer the trial."

MR. OSBORNE, of New Jersey: "We handle that question in what appears to me to be a very satisfactory manner in New Jersey. If representations are made to the court that the accused is insane the court appoints physicians, alienists, to examine the accused, and if upon the hearing the court determines that the accused is insane he commits him to an institution until such time as he recovers."

PROF. POTTS: "The case is simply continued until his recovery?"

MR. OSBORNE: "They do not move the indictment. I had exactly that situation in a case tried before me a few weeks ago. A negro had killed his wife and baby; he hung them to a bedpost, and, of course, the plea of insanity was interposed, not with very much effect ultimately, but his counsel made such an application. The man was tried and insanity was interposed at the trial and the jury returned a verdict of guilty, and he will be electrocuted within a short time."

PROF. MIKELL, of the University of Pennsylvania: "It may be true, as Mr. Leavitt said in his last remark, that the English people have a genius for briefly stating common sense in their statutes, but exceptions prove all rules, Mr. Chairman, and it seems to me the statute on insanity is the exception. How in the world can it be maintained that there is good common sense in a statute which provides that one who has committed a crime, or rather did an act, such as killing someone, and who has been proven insane at the time he did the act, though it is assumed that he is sane now; how in the world can it be provided that that man should be shut up in an insane asylum because he was insane a year ago when it is admitted by all alienists, by everybody else present at the trial, that he is perfectly sane now? If that is common sense, then every one of us might just as well be put into the asylum now, if we were insane ten years ago. The fact that he committed a crime some time ago surely is no reason for putting him into an insane asylum; if he committed that crime, and the idea is that he had the intent to commit the crime, then why not find him guilty of the crime and be done with it; why not find him guilty of the crime and confine him where men who are guilty belong, which is not in the asylum, but in the jail. I know there are men now who maintain, and it seems to me that is at the basis of the New York idea, that any man who kills another is a menace to society, that it is perfectly immaterial from the viewpoint of the safety of society whether he is insane or whether he is sane. I can understand that perfectly well, and there are some who maintain logically, and are willing to stand on that position, that therefore, an insane man should be hung just as a sane man. Why not? He is just as much a menace to society as a sane man, probably more. Therefore, since the idea of punishment is being eliminated from the law and we do not hang a man, if it please you, to punish him, but we hang a man or put him in the penitentiary for the purpose of protecting society from him; since society is just as much in danger of that man whether he is sane or insane, therefore, hang him just as you would a sane man because his menace to society is just the same. That is a practical, logical position, but it seems to me the position of the English statute and of the proposed New

York statute starts out with one assumption and then is afraid to follow the logic of its own terms and backwaters toward the end. If this man is such a menace, why not hang him? Why not put him in the penitentiary for life; why shut him up in an insane asylum? Furthermore, the proposed statute of New York and the pamphlets that were issued by the committee in support of it, and indeed, it seems to me the remarks of the gentleman from New York on the statute this morning, suggest a distinction that must be made in any rational code of law, namely, that between doing an act and committing a crime.

"The gentleman said that a man who commits murder is a menace to society whether he is sane or insane, but that is not the point. The point that this Association takes is that a man does not commit murder who kills a man if he was insane when he did it. That is the point, and it is a point which it seems to me in all of the arguments of the committee from New York they have never seemed to recognize. They speak of a man who was insane committing a crime, but the man who was insane when he did the act, does not commit a crime. That is the very point. Through all our codes of criminal law, and that has been true in England, not for 30 years, but for 500 years, to commit a crime there must be an act and there must be that thing called the guilty mind. If you assume that one who kills another did have the evil mind, then, of course, he has committed a crime and should be hung instead of being put in a penitentiary, but assume he has not the evil mind, he has only done an act and not committed a crime. It is the same with a man who kills another person by accident. We do not speak of him as having committed a crime, at least it seems to me we should not; we say he never committed any crime at all, he did an act, it is true, he killed somebody, but not having the intention to kill him, and not having the evil mind, he is not guilty. Waiving the point as to whether a really insane man can intend to kill, even assume that he can, even then does it follow he should be incarcerated? Take a child under seven years of age who kills somebody and intends to kill. Our law for 500 years has said that that child cannot be put in the penitentiary or in the insane asylum, either one. Why? According to the proposition here he did the act, he killed somebody, but he intended to kill him, and according to the New York theory, therefore, he should be punished; he is a menace; and yet our law has never punished such a person. They have said that, though he had the intent to kill, though he was an irresponsible person, he did not have the evil mind which was necessary. Now, I maintain that the insane man is in the same category. He may have intended to kill, it is true, but he did not have the evil mind which added to the killing would be necessary to make him responsible. A man wakes up in the night thinking burglars are in the house, and he mistakes a servant for a burglar and shoots. Our law always said the person is excusable; the murder was a reasonable one, yet he had the intent to kill and he did kill. Therefore, if all that is necessary to punish a man is the killing and the intent to kill, that man should be hung likewise."

PROF. KEEDY: "It is very helpful to the committee to have these various views expressed here. There is one thing further I should like to say with reference to the position taken by the New York committee, viz., that he who commits an injury to society is a menace to society and should be dealt with by society as a result. The proposal of our committee is at variance with this view, but even if we should agree that the law be changed, that this view be accepted, it must be done by changing our whole theory of crime; that result cannot be accomplished by a statute dealing with the method of handling insane cases where there is a prosecution for crime. Our criminal jurisprudence can not be changed by altering the form of the practice in insanity cases. That is all I care to say."

This closed the discussion, and the President recognized Professor Mikell, chairman of the special committee on a draft of a code of criminal procedure.

PROF. MIKELL: "This committee is not ready to make a formal report as yet, and therefore no report was prepared of our deliberations because, unfor-

tunately, they could not get it through in time to have it printed. It has seemed to the committee that it would be a mistake to make a formal report now. The subject is so large, the difficulties are so considerable, and I might add so technical, that the report which the committee is practically ready to make now, and which has taken the form of a statute on the law on indictment, could hardly be discussed with any benefit either to the committee or to the members of the Association present. Without having done something more than merely listen to my reading of the statute, it would have to be printed and submitted to the members of the Institute and studied by them as a whole, it seems to me, if any real benefit is to be got from it. But since the committee has been in existence for a year and has put in a good deal of time it was suggested by the president that it might be interesting to hear for five or ten minutes at least, something of the character of the work that we have been doing. One need not go again into the question of the necessity for reform in criminal procedure. We have had that dinned into us by the daily newspapers and the weekly and monthly magazines and speeches of all kinds. Indeed, we had it put before us very vividly yesterday by Mr. Moorfield Storey. It is only fair to say, however,—I do not know that it is necessary to say it to an assemblage of lawyers—that a good deal that is written and said about the defects of criminal procedure is distinctly exaggerated. I think a wrong impression might be got, although not intended either, from the paper of Mr. Storey yesterday. I have in mind his illustration in which he spoke of the classic case of the Delaware man who was indicted for stealing a pair of shoes, and it turned out that in his haste he had got two belonging to the right foot instead of a left and a right: a case in which the indictment was declared faulty so that he could not be convicted. From such things as that the impression might be gained, and I think is got by some people, that therefore the man escaped the consequences. Of course, it does not mean any such thing. It means simply that a new indictment was prepared against him, perhaps the next day by the grand jury, and then that the man was tried and convicted of what he actually did."

THE PRESIDENT: "Under English procedure in most cases he would be off entirely."

PROF. MIKELL: "I am not defending the procedure. Likewise, in a case cited by Mr. Storey in which the word 'the' was omitted in an indictment. It so happened that the Constitution of Missouri, in which state the case occurred, says all indictments shall conclude as follows: 'Against the peace and dignity of the state of Missouri,' and the pleader left out the 'the.' The judges of the Supreme Court thought there was nothing else they could do but quash the indictment, because they said the Constitution itself says that these words shall be put in there, and if they are left out the constitutional provision has not been lived up to. The point I want to make is, that bad as criminal procedure is, there are many of the troubles we find in the administration of the criminal law which are not directly due to criminal procedure, but due to some other things; in that case due to the gentlemen of a constitutional convention who thought it necessary to put in a state constitution the actual words in which an indictment must conclude, which I think we will all agree is not the place in which to find that language. However, I will just state in brief the work that your committee has done and the general way in which they have acted. The idea has been naturally to frame a statute or propose a statute or bill simplifying the law of indictment, to take out as far as possible all of the technicalities so-called with which the law is now conversant. It must, however, be admitted that any code of criminal procedure must be framed with these two ideas in view; first, as an indictment to convict persons who have committed crime; that is very necessary; but it is equally necessary that your criminal procedure should protect the man who is accused of crime, who did not in fact commit it. It is very bad that a number of men who have committed crime should escape. It would be infinitely worse if the innocent man through your code of criminal procedure was liable to be convicted in any great numbers at all. No man would be free and you could not live under such a code. We have got to pro-

tect the man who is innocent. Therefore, the first problem that is to be met in framing a code of indictments even is to so balance those two things as not to have those safeguards which would enable the guilty man to screen himself behind them, but at the same time to have sufficient safeguard to protect the man who really has not committed a crime but who may be indicted for it. It is constantly assumed, it seems to me, in these discussions that most people who are indicted or who have got off on technicalities were guilty. I protest that that does not at all follow. Statistics will show that of the number of indictments which are not quashed, in cases which go to the jury, that a very large proportion of those men are actually acquitted on the merits of the trial before the jury. What right have we to assume that if an indictment was quashed that man who escaped was guilty? I protest that there is no such assumption necessary. The committee, therefore, has tried in its draft of a bill to keep those two things in view as far as possible, and to frame it so as to take out all unnecessary elements, to give a man sufficient data to notify him of his crime, and to protect the innocent man, and at the same time not to allow a refuge for the person who is convicted. I might say this much more: the committee have tried to reach that ideal in a large measure by introduction of the bill of particulars and by putting as little as possible in the indictment itself. I might say that practically the indictment does nothing more than say that A killed C, or A stole something from S, and so there will be as little as possible therefore to quash the indictment for. It provides fully that if a person accused needs more information than that for the purpose of making his defense that he is entitled as a right to a bill of particulars setting out the amount of property he is alleged to have stolen or the circumstances under which the killing was done, so that he is safeguarded in all of his proper defenses. At the same time, by making the bill of particulars freely amendable on the trial, the delay of quashing an indictment and the framing of a new one becomes unnecessary. All that is necessary is to add a few words with a pen on the actual trial of the case. That, of course, is only one little step in the whole plan of the bill. The committee expects to have the bill in final shape, and, of course, it will be printed and copies distributed before the next meeting, so that we can have a full discussion of it at that time."

THE PRESIDENT: "Necessarily this subject cannot be discussed until we have something more formal before us. As soon as we have exhausted the topic and got the thing in shape from an investigation of all sources it will be reported for final discussion and for distribution."

MR. MACCHESNEY: "I want to make a suggestion and ask that it be referred to the Executive Board for consideration. There is a good deal of trouble arising over the lack of a proper classification of crimes under our criminal law. It makes it very difficult to get proper enforcement or convictions in the proper cases. What I have in mind is this: For instance, at the recent conference of commissioners on uniform state laws they were about ready to adopt a so-called flag law, punishing with severe penalties desecrations of the flag. There was no distinction drawn between the man who hauled down the flag and trampled it under foot and treated it with contempt, and the man who innocently, perhaps, showed a box of candy with a flag appearing on it. There was no distinction made practically between the man who had that box of candy in his possession without any knowledge of the fact that the law had been broken with reference to it, and the man who had been in fact responsible for placing the flag upon the box in the first instance. Then take it in connection with this whole agitation known under the general heading of White Slave, and this case in California, which has been attracting so much attention. It seems to me that many of those questions are general and that some classifications of crimes which would enable those who draft statutes, and those who interpret them, and those who are preparing the code, to have before them the distinction between different grades and varieties of crime.

It will greatly facilitate discussions oftentimes and lead to more correct legislation. I would, therefore, move that the question of the creation of a committee on classification of crimes be referred to the Executive Board, and if in its judgment it is desirable to have such a committee that the next president be authorized to appoint one to take up the subject and to report at a future meeting." The motion was seconded and unanimously carried.

JUDGE NORCROSS, of Nevada: "There was a portion of the address of Mr. Storey yesterday which, it seems to me, ought not to be overlooked by this conference. It ought to be a subject specially to be considered by the committee on uniform procedure. It goes to a question which undoubtedly would require constitutional amendments in most of the states of the Union, and that is the question whether the defendant under our present law should be compelled or not to become a witness against himself. I had occasion to consider that question some time ago in an article which I contributed to the *Yale Law Journal*. The subject was not new, of course, with myself, but it has been presented in a number of articles. I believe that so far as procedure is concerned, there is no one thing that would be as beneficial to the matter of prompt and just determination of criminal cases as the removal of that provision in our constitution. When I first considered the matter it seemed to me it was one of the things necessary to the protection of the individual, but the reason upon which that rule was established in our constitutions and laws long ago ceased to exist, and the reason having ceased to exist, the rule itself should cease also. As stated by Mr. Storey, the only effect of that rule is in many cases to prevent the conviction of the guilty. It is a protection to the guilty and not to the innocent, and I, so far as procedure is concerned, think there is no one thing that a body of this kind could do that would be of more ultimate benefit in criminal jurisprudence than the abolition of this one particular provision in our constitutional guarantees.

"While I am on my feet and as I have come a very long distance and may not have the pleasure of being before this conference for some years again, although I would like to be in attendance frequently, I would like to make this observation: I have had the fortune, good or bad, to touch the great crime problem from several points of view. I have changed my early views very materially from the experience which I have had as a member of the Board of Pardons of my state, which I have served on now for nearly ten years, and I mention this now with reference to the matter of procedure. I believe the public at large consider that the great fault with our administration of the criminal law is in our procedure. In my judgment, the question of procedure is the least of the difficulties in the administration of the criminal law. The reason that we have such widespread crime and the reason in which we practically accomplish nothing in the way of substantial result in dealing with the great problem of crime is because we are not making any serious attempt to reach the origin of crime, and we are not making any serious attempt, especially until the last few years, in reaching legislation which will tend to make the criminal a better man when he leaves the prison than he was when he went into it. We have now in this country over 100,000 men in the state prisons, which is an endless mill into which we are sending the grist every year and from which the grist of two and four and ten years ago is coming out. The men coming out are worse in 99 out of 100 cases than when they went in, and as long as you have that system of dealing with crime you are not going to accomplish any practical result. It seems to me if this organization is ever to accomplish any practical result, which is what we should attempt to accomplish, we have got to devote our time to dealing with the extent and the character of punishment. My observation has been that there are as many if not more miscarriages of justice hidden behind stone walls and prison bars of our great institutions throughout the country than those which are paraded in the public press and which the public at large know something about. If a man has committed an offense for which the punishment of one year would be adequate and that man is given a sentence of five years, there is as much a miscarriage or a greater miscarriage of justice than there would be otherwise.

And not only that, but when that man comes out of the prison he is an enemy of society instead of a reformed person.

"I want to apologize for these few observations, but I feel from the fact that I have possibly touched this question from several points of view, not only as a prosecutor, but as a defender of criminals, and as a member of the Pardon and Parole Board of my state, that some observations from the other side are worthy of consideration, and they are the observations which I believe will be most beneficial in accomplishing some result."

THE PRESIDENT: "I might suggest that we have a report this afternoon on that very subject that will touch upon it. It comes under this last heading on the indeterminate sentence and release on parole. We have a report from a special committee on that. We will be very glad to hear then, if we have time, at greater length, on the subject. Mr. Abbott has a report here. We are very glad Judge Norcross has come from across the continent to discuss these questions with us. We had last year a full discussion in Milwaukee on this very topic, and we hope to have time to discuss it this afternoon. On the first subject Judge Norcross suggested, if he will prepare a resolution and introduce it today, we will refer it to the proper committee."

The President then introduced Prof. Roscoe Pound, of Harvard University, who read his report as chairman of the Committee on Organization of Courts. The report will be published in a subsequent issue.

MR. MACCHESNEY: "Just for the purpose of getting it before the Executive Board, I would like to state that at a meeting with reference to some military matters the Judge-Advocate-General of the United States army expressed a desire that there might be in connection with this Institute a section or committee in which problems arising in connection with the administraton of military law might be considered, and so I move that a society of military law be created as a section of the American Institute in order that the matter may be referred to the Executive Board for proper consideration." The motion was seconded and unanimously carried.

Adjourned for luncheon.

The afternoon session opened at 2 o'clock, with Chief Justice Winslow, of Wisconsin, temporarily in the chair. Discussion of Prof. Pound's report was called for.

JUDGE DECOURCY: "I arise to say a word only because I do not want anyone to feel that we do not fully appreciate the very great value of that report. It is very valuable but prohibits anything like a descussion at this time on the part of those of us who have not had an opportunity to study and digest it. Whether we all agree entirely with his suggestion as to the remedy, there can be no question as to the importance of the history of the present unsatisfactory conditions; and I believe that therein lies a great part of the value of the work of this Institue. Instead of following the temporary superficial ideas of people who want a change without knowing what gives rise to present conditions, we can best know what to hold fast to of the things of the past by knowing the history and the reason for the existence of these present conditions and their history in the past. There will be no dispute, no difference of opinion as to the historical part of the paper. As to the other part of it, as to the advisability of following the suggestion, for which he gives so much credit to Lord Shelbourne, but which I think is more due to Prof. Pound himself in its present form. I am sure that when we have an opportunity to get together again and to study that plan and consider its legal obligations we will

be able to adopt or modify or suggest some substitute for it at that time. I want personally to present my great obligation to him for his admirable work in covering the ground in this direction."

At this point Judge Carter resumed the Chair and called for the report of Mr. Edwin M. Abbott, chairman of the Committee on Indeterminate Sentence and Release on Parole. The report is published elsewhere in this issue, together with the discussion that followed it.

THE PRESIDENT: "The other committees that have reports here are not represented in person. The reports will be published, but I shall call upon the Secretary to make a brief announcement as to each of two or three reports such as he is prepared to make better than I am."

THE SECRETARY: "There is Committee C on Judicial Probation and Suspended Sentence. That committee has been working for a number of years collecting statistics as to the actual operation of judicial probation and suspended sentence, and it was expected that the committee would make a report at this meeting. Judge Bolster, of the Municipal Court of Boston, writes me that the work of collecting statistics has been much more extensive than he had expected, and that he is not now ready to submit the results of his investigation. He asks that the committee be continued. In another year he hopes to bring something definite to the attention of the Institute.

"Then there is Committee No. 3 on Criminal Statistics. Mr. Koren of Massachusetts, is the chairman of that committee. It was the expectation to have a definite report at this meeting, but on account of ill health Mr. Koren writes me that he is unable to bring his investigations to a head and submit them in the form of a satisfactory report and will hope to have it ready at the next session and asks that the matter be continued."

THE PRESIDENT: "I desire to say that from my viewpoint this is as important a branch for the advancement of criminal science as any that can be undertaken. The courts of this country have no statistics of any kind. It is a sad lack. They have it in European countries, Germany and France and Great Britain. The Municipal Court of Chicago has statistics which they have kept for some time, and the Supreme Court of which I am a member first started to publish in a pamphlet a very meager amount. I hope to see the work of the Institute such that it will in the next ten years bring about reports from every state."

THE SECRETARY: "Committee G on Crime and Immigration had referred to it last year three questions, but the committee failed to meet as a committee and report. The chairman of the committee, however, prepared a report of his own on one of the questions. He asked Prof. Kirchwey of Columbia to report on another question and Mr. Ferrari of New York on still a third. Those reports are here, but inasmuch as the gentlemen who have made them are absent, it will serve the purpose if they are printed in the next issue of the Journal. Unless the reading is called for I suggest that that course be adopted."

THE PRESIDENT: "That is in accord with my own ideas. These are all the reports that we have."

JUDGE DITTENHOEFER'S PROPOSALS FOR REFORM OF CRIMINAL PROCEDURE.

At this juncture Judge A. J. Dittenhœfer, of New York City, delegate from the State of New York, offered the following proposals for the

Reform of Criminal Procedure, which were ordered to be inserted in the minutes:

"The swift but orderly administration of criminal justice in England as recently exemplified in the trial and conviction of Dr. Crippen of the crime of murder, the determination of his appeal and the execution of the death sentence has directed renewed attention to the administration of criminal law in our courts. That there are many vexatious and unnecessary delays cannot be denied, but in proposing remedies care must be taken that a defendant in a criminal prosecution, no matter how much the public may howl, can and should have a fair and honest trial. With these views in mind, the following suggestions are made by me. Some of them may be considered extremely radical, but I have often, in my long career, been ahead of the times in advocating political, social and economical reforms which were eventually accepted.

1. "The office of coroner should be abolished and its duties should be vested in the police magistrates. They are absolutely unnecessary, and much delay is caused by the preliminary proceedings before a coroner. Besides their determination does not contain the element of finality, for, if a criminal be acquitted by a coroner, the district attorney is not bound to pay heed to the decision, but may, notwithstanding the acquittal, take the case before the grand jury.

2. "In minor cases and in all cases involving imprisonment, say, for less than three years, an indictment should not be necessary. Grand juries, as a rule, hear only such evidence as the district attorney presents, and in most cases they find or refuse to find indictments, as the district attorney may advise. Why not, then, avoid the delay caused by this intermediate body, and let the district attorney, in the first instance, file in the office of the clerk of the Criminal Court a complaint in behalf of the State against the accused defendant, setting forth plainly and concisely the offense with which he is charged, and annex to the complaint his affidavit that the complaint is made on facts within his knowledge, or on information received by him in his official capacity and considered by him trustworthy. On the back of the affidavit should be the names of the witnesses and the paragraphs of the law alleged to have been violated by the accused.

"On the complaint thus filed, the judge sitting in the Criminal Court should be authorized to issue a bench warrant, admit the defendant to bail and, in his discretion, on application of the defendant, made on short notice, he should have the power to refer the complaint to a police magistrate, who should be required to make a summary investigation. On that investigation the district attorney should examine the witnesses endorsed on the complaint, in the presence or absence of the defendant, as may be thought best, it being borne in mind that the defendant is not, under the practice as it now exists, allowed to be present in the grand jury room. The defendant should have a right, at his peril, to give evidence on his own behalf, but should have no right, as is the case under the grand jury system, to call witnesses or be represented by counsel.

"The magistrate should be required to close the hearing within a certain number of days, and file with the clerk of the Criminal Court the record and his findings on the facts. If the matter is not sent to the police magistrate, as above outlined, the criminal judge should order the case placed on the calendar for trial; if the matter is sent to a criminal magistrate on the filing of the record, as above set forth, and if the matter is not sent to a police magistrate, the defendant may, on short notice, apply to the judge to dismiss proceedings. If they are not dismissed, the case should be ordered on the calendar for trial. No motion to quash or dismiss, excepting as above stated, and no demurrer should be allowed, but all legal questions that can be raised on demurrer should be presented at the trial.

3. "Should, after a sufficient trial, this practice be found to work satisfactorily and do no injustice, it should be extended to all cases, excepting, perhaps, such as involve capital punishment. In olden times, the grand jury was the bulwark of the subject against the aggressions of the crown. At the present day, and under existing circumstances, it has lost its importance.

4. "The courts should be empowered to limit the examination of the jurors by each side, say, to five minutes. Knowing that there is a time limit, attorneys will condense their questions and in most cases succeed in obtaining, within the allowed time, sufficient information as to the qualification of the jurors. The very great delay in the actual commencement of important trials, which has sometimes amounted to weeks, would thus be obviated.

5. "No more than five minutes should be allowed for argument on the admission or rejection of evidence. In most instances no discussion is necessary, and there can hardly be a case in which five minutes is not sufficient Much waste of time would thus be avoided.

6. "In all cases in which the trial occupies more than, say, two days, the summing up of each side should be limited to about an hour and a half. In all other cases the limit should be in the discretion of the court.

7. "A certain number of medical experts should be appointed on the first Monday of January of each year, one-half by the Governor, and one-half by the Chief Justice of the highest court. They should receive a fixed salary Defendant and prosecutor should have a right to make a selection from these experts without any charge to them, and it should be a misdemeanor for the defendant, or anyone else, to pay, or for the expert to receive, additional compensation. If the defendant or prosecution call in an expert other than one of the official experts, and, in my opinion, it would be unconstitutional to deprive the defendant of that right, counsel should be allowed to comment on the fact, and the court in its charge to the jury should call attention to that fact with a statement of the law under which the official experts are appointed. This system, would stamp out, to a great degree, the scandal at present existing of experts of equal distinction testifying against each other, and on the side on which they are retained and from which they receive compensation.

8. "In all cases involving imprisonment, say, for more than five years, the appeal should be directly to the highest appellate court; in all other cases to the intermediate appellate court, whose decision, if concurred in by a majority of the judges, should be final. If there are dissenting judges the court, in its discretion, for good cause and on application of the appellant, made during the term in which the decision was rendered, may certify the questions raised on appeal for review by the highest appellate court. The delays now caused by the piling of appeals on appeals would thus be avoided.

9. "If the judgment is reversed and a new trial ordered, and, on the second trial, there is a conviction on the same complaint or indictment, there should be only one appeal to the highest appellate court, and if the conviction is affirmed, the decision should be final. If there should be a reversal on the last mentioned appeal, and a conviction had on the third trial on the same complaint or indictment, no further appeal should be allowed.

"These views are given, not with the expectation that they will all meet with immediate approval, but with the belief that some of them, at least, will prove effective in improving and expediting the administration of criminal justice without depriving the accused party of any substantial right and of a fair and impartial trial and protecting him from persecution as distinguished from prosecution."

Officers of the Institute were then unanimously elected as recommended by the nominating committee. They are as follows:

President—Quincy A. Myers, Justice of the Supreme Court of Indiana, State House, Indianapolis, Ind.

Vice-Presidents—Charles A. DeCourcy, Justice of the Supreme Judicial Court of Massachusetts, Boston, Mass.; Dr. Katharine B. Davis, Superintendent, State Reformatory for Women, Bedford Hills, N. Y.; Frank H. Norcross, Justice of the Supreme Court of Nevada, Carson City, Nevada; Dr. William A. White, Superintendent, Government Hos-

pital for the Insane, Washington, D. C.; Dr. David C. Peyton, Superintendent, State Reformatory, Indiana.

Treasurer—Bronson Winthrop, 32 Liberty St., New York City, N. Y.

Secretary—Henry W. Ballantine, Madison, Wis., Professor of Law in the State University.

Executive Board:

For the term expiring 1914—Henry M. Bates, Dean of the School of Law, State University, Ann Arbor, Michigan; William E. Mikell, Professor of Law in the University of Pennsylvania, Philadelphia, Pa.; Alexander H. Reid, Judge of the Circuit Court, Wausau, Wis.; E. Ray Stevens, Judge of the Circuit Court, Madison, Wis.

For the term expiring 1915—Edwin M. Abbott, of the Philadelphia Bar, 819 Land Title Bldg., Philadelphia, Pa.; William N. Gemmill, Judge of the Municipal Court, Chicago, Ill.; George W. Kirchwey, Professor of Law, Columbia University, New York City; Edward J. McDermott, of the Kentucky Bar, Lieutenant Governor of Kentucky, Louisville, Ky.

For the term expiring 1916—Arthur J. Todd, Assistant Professor in Sociology, University of Illinois, Urbana, Ill.; Dr. William Healy, Director of the Juvenile Psychopathic Institute, Chicago, Ill.; Emmett N. Parker, Justice of the Supreme Court of Washington, Olympia, Washington; Edwin Mulready, Commissioner of Probation, Court House, Boston, Mass.

Ex-Officio—John H. Wigmore, Professor of Law in Northwestern University, 31 W. Lake St., Chicago, Ill.; Nathan William MacChesney, of the Chicago Bar, Commissioner on Uniform State Laws, 30 N. LaSalle St., Chicago, Ill.; John B. Winslow, Chief Justice of the Supreme Court of Wisconsin, Madison, Wis.; Orrin N. Carter, Justice of the Supreme Court of Illinois, Chicago, Ill.; Frederic B. Crossley, Managing Director of the Journal of the Institute, Librarian of the Elbert H. Gary Collection of Criminal Law and Criminology, Northwestern University, 31 W. Lake St., Chicago, Ill.; Robert H. Gault, Managing Editor of the Journal of the Institute, Associate Professor of Psychology in Northwestern University, Evanston, Illinois.

This was followed by the report of the Secretary, who urged particularly the organization of state societies. Mr. Vance of Minnesota, Judge Meyers of Indiana, Judge Osborne of New Jersey, and Mr. Baldwin of Washington, D. C., all expressed their determination to go imme-

diately in their respective states about the work of organization of branches.

THE PRESIDENT: "It is absolutely essential, if we are going to do any local work in the way of education, to have some local men interested, and the way to have him interested is to have a local organization. He won't do it spasmodically, unless he has something to urge it on. The inspiration behind this movement has been a few men who have been determined to organize and push this thing on. Without them we would not have had this movement. Without them we would not have had the Journal. Without them we would not have had these reports, and if there is any benefit coming from it at all it will come from these local organizations."

JUDGE DECOURCY, of Massachusetts: "This is to my mind the most important practical suggestion of the meeting so far. The national organization is performing its work with great satisfaction, but the practical results must be worked through your state organizations because after all this whole problem of the criminal administration is a local problem, and I think one of the most important things that is now being made known to the people of the country is that these generalized statements about the breaking down of criminal law fail to be of any effective use because they are general. Here we have something like 50 independent jurisdictions. It is impossible for the people in one jurisdiction to have any control of criminals in another jurisdiction. It is important to emphasize the fact that this is, so far as the achieving of practical results is concerned, a local question, and hence the importance of organizing in every state a strong, not necessarily a large, but an aggressive local branch of the institute. I think the Middle West has done its duty very well comparatively. The Far West has not come up to the line. I trust that this coming year the special committee which did not work last year with reference to organization of state societies will be active. I hope to see some active work done in the South."

Mr. Herbert, of Columbia, S. C., was introduced and spoke in part as follows:

"I was unfamiliar with the work of this association until yesterday afternoon, when I came in here and was so much delighted with the feeling and the amount of information that I obtained that I came back this morning and enrolled as a member and have attended through all the meetings today. I fully intend, at our meeting of the State Bar Association which will take place in the early part of the winter, to organize a branch of this institute as part of the State Association. I will further say that my interest in criminology was due to the fact that I had endeavored to prepare a paper looking to obtaining more power for judges in criminal cases, such as Mr. Moorefield Storey suggested here yesterday. I wish to be able to give some statistics to show that in such states, for instance, as New Jersey and Pennsylvania, and several places where judges have more power in criminal cases, that the law is very much better enforced than it is in my state, where the judges have such limited power. But I understand that there are practically no available statistics. I took the matter up with the Census Department in Washington, and I particularly waited here this afternoon hoping to learn from the work of the committee in charge of statistics, whether or not they had taken that matter up with the Census Bureau in Washington. It seems to me that some result might be obtained through that line of procedure."

DR. SEARS, of Vermont: "I tried some two years ago to start an organization but at that time it did not seem best to continue it. I think now that several

members of our bar have attended the meetings here we can, perhaps, start a state organization."

MR. HART, of Louisiana, said that they have a very efficient prison association which is doing much of the work that a branch of the Institute could do.

MR. ABBOTT, of Philadelphia: "We have an executive committee in this work. That committee is made up not of lawyers. I think Judge Rallston and myself and Mr. Lisle, the secretary, are the only lawyers on the committee. We have doctors and one minister and others interested in the work. We held a state meeting this year and it was a good meeting. We held it at the University in Pennsylvania in the Law School, in one of the large rooms. It was well attended. We had a very bad, stormy night, yet we had over 400 there. The committee took up a list of the various professions, and we sent out 3,000 invitations to join us. We did not get such an awful influx of members out of it, yet we are going to keep after that list. Each member of the Pennsylvania branch has this list. Judge Rallston and myself are drumming the lawyers. We hope to have at least 150 or 200 lawyers in this fall, and we are going to keep after the doctors and the penologists in the same way. That is the way we work with the Pennsylvania branch. We invited two or three guests over from New Jersey, and they were interested in the work. Delaware is interested and will join in the movement."

MR. MACCHESNEY: "I want to call the attention of some of these gentlemen to the fact that we have a bulletin No. 8 of the Institute which the secretary will be glad to send them. It gives the history of the organization, an outlined plan of the organization and model constitution for state societies. If there are not enough copies available I hope the incoming executive board will have the bulletin reprinted with the new list of officers, and so forth, as it is a great help in organizing, and I am sure that with some men like Mr. Abbott and others on the Committee of State Societies and New Membership, much can be done to interest them. I will make a suggestion in this connection. There are a number of organizations which have appointed delegates to this meeting. If those organizations are followed up and asked for the names of people in the particular state who may be interested in the work you might find that you would have a nucleus of people who would help in the organization in that state. It seems to me we could get in touch with the great professional organizations and other groups of men and work through them, and have them co-operate with us in getting the organization together.

"Now that I am on my feet, I want to call the attention of the Institute to two or three amendments that we made to the constitution as printed here so that if it is re-printed they will be incorporated. These amendments were adopted by the Executive Board and not put formally in the record, and, therefore, might be lost. In Article 4 of Section 4 of the Constitution, after the word 'coat' insert 'or in prescribed manner in connection with academic dress.' In Article V following the word 'institute' in the second line of Section 2, the words 'Its former Presidents, the Managing Editor and the Managing Director of its Journal, ex-officio.' The end of the amendment is intended to include those men on the Executive Board as they are now. Following the last word of Section 3 of Article V, the following: 'The Executive Board and the Council shall select their own chairman.' Those were amendments which we have adopted, and under which we are working, but not yet printed."

The report of the Treasurer was then read, and it was followed by the report of the Managing Editor of the Journal. The urgency of the need for financial assistance for the Institute and the Journal set forth in the Editor's report was emphasized strongly by Dean Wigmore. After a financial statement by the Managing Director of the Journal the Committee on Resolutions reported as follows:

MR. HART: "The Committee on Resolutions beg to report as follows:

"Montreal, September 4, 1913.

"To the members of the American Institute of Criminal Law and Criminology:

"The undersigned committee on resolutions beg to report as follows:

That the thanks of the Institute and the individual members thereof are due and are extended to all those in Montreal who have contributed so much to making the meeting a great success, and particularly are we under obligations to the Montreal committee on arrangements consisting of Mr. Andrew R. McMaster, Mr. John E. Martin, Mr. L. K. Laflamme and Owen C. Dawson, for the careful and splendid arrangements made by them for our meeting and for our entertainment;

"To Mr. Frank B. Kellogg, president of the American Bar Association, for his inspiring address;

"To Mr. J. C. Walsh, for his genial address of welcome;

"To Mr. Moorefield Storey, for his elaborate paper which as he read it added to the appreciation of its title, 'Some Practical Suggestions as to the Reform of Criminal Procedure';

"To Chief Justice Ridell of the Supreme Court of Ontario for his presentation of the laws of his Province and of the Dominion in general, and for his cordial invitation that in some future year we may meet in Toronto;

"To the University Club for placing our members upon its visiting list, giving us a home-like abiding place within which to rest between our labors;

"To the press of Montreal, for its good, careful and correct accounts of our proceedings and of the papers presented and addresses made by which our work will become better known to the people of Canada;

"And to the Hotel Windsor, for furnishing meeting and committee rooms.

"And your committee therefore moves that the thanks of the Institute be extended to each and all of those hereinabove named and that these resolutions be made part of our permanent records and be furnished to the press of Montreal.

(Signed) W. O. HART, Louisiana;
Chairman.
ENGENE O. DUNN, Maryland;
F. H. NORCROSS, Nevada;
F. W. SEARS, Vermont;
F. H. ALLEN, Kansas;
H. V. OSBORNE, New Jersey;
NATHAN W. MACCHESNEY, Illinois.
Committee on Resolutions."

"On behalf of the committee, I move the adoption of the resolution appended to the report which I have read." The motion was seconded and carried unanimously.

JUDGE WINSLOW: "I have a resolution here which I will read:

"Resolved, That the thanks of the Institute be tendered to Judge Carter for the very able and courteous manner in which he performed the duties of president during the past year as well as during the annual meeting of the Association now just closing.

"I move the adoption of the resolution." The motion was seconded and carried unanimously.

THE PRESIDENT: "Even if the time was not so short I would not be able to express my appreciation and gratitude for these kind words. The duties of my office have been pleasant, although somewhat onerous, but taking it as a whole it has been satisfactory to me. The satisfaction has come largely from the co-operation and hearty assistance I have had from those associated with me in the work, especially the Secretary. I think if any resolution is due to any member of the working force it is due to him. He is about to leave us now for a vacation in Europe, and for study and investigation to be gone about six months, and we must have a new Secretary. I suggest that the new Secretary will have a fast

pace to follow if he keeps up anywhere near the pace that has been set by the present incumbent in attending to his duties."

JUDGE DECOURCY: "We are doing what I suppose the Law School at Madison is doing; giving the secretary a leave of absence, and so are not going to give him the same sort of vote as to a retiring member.

"I desire to have it appear on the record not alone for the work of the past year, but for the work from the very beginning, second only to the work of the organizer and inspirer of this entire organization, Prof. Wigmore, this Institute owes its existence as well as its success largely to the work of the efficient secretary. I wish to express the hope that when he returns next year with a large fund of health and a little more information if it is possible to acquire any more in the lines of criminology, he will allow us once more to put him in charge of this meeting for many years to come, and I move the thanks of the Institute be extended to the secretary coupled with the wish on its part that he may have a very healthful and happy vacation." The motion was seconded and unanimously carried.

In his response Mr. Gilmore expressed his appreciation of the resolution and his confidence in the future of the Institute and in the efficiency of the incoming Secretary, Professor Ballantine of the University of Wisconsin.

The new President, Justice Meyers of the Supreme Court of Indiana, expressed his appreciation and the Institute adjourned *sine die*.