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Notes on Current and Recent Events

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COURTS—LAWS.

Proposed Mode of Parole in Louisiana.—An Act to establish a mode by which prisoners sentenced to an indeterminate sentence may be paroled and in order to carry out the provisions of this Act to create a Board of Parole and to define the powers and duties of said Board.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That there is hereby created a Board of Parole which shall consist of three members to be appointed by the Governor, in which said Board shall be lodged the power to determine when and under what circumstances a prisoner sentenced to an indeterminate sentence shall be paroled.

Section 2. Be it further enacted, etc., That said Board shall, within thirty days after the adoption of this Act, meet and organize and elect one of its members President, choose a Secretary, who need not be a member of said Board, and with the approval of the Governor appoint a Parole Officer for each Congressional District of the State, and adopt a uniform system for the marking of prisoners by means of which shall be determined the number of marks or credits to be earned by each prisoner as a condition of release on parole, and such other regulations as may be necessary for the carrying out of this Act, which system so adopted shall, however, be subject to revision by the Board from time to time.

Section 3. Be it further enacted, etc., That each prisoner sentenced to an indeterminate sentence may, a month prior to the expiration of the minimum term of his sentence, make application to the Board in writing and in such form as the Board may prescribe for his release upon parole; provided that if deemed suitable by the Board, the Board may in any particular case dispense with this rule.

Section 4. Be it further enacted, etc., That it shall be the duty of said Board of Parole, immediately upon the filing of said application, to enter into an investigation of the conduct of said prisoner during his term of imprisonment, and if upon investigation it shall be found that the prisoner has, under the rules and regulations of said Board of Parole, become entitled to discharge from imprisonment upon parole, this Board shall order the release of said prisoner from imprisonment at the expiration of the minimum term fixed in the sentence; provided, that should said prisoner's conduct not have been such as to entitle him to discharge, the Board may, in its discretion, at any subsequent period not less than six months, investigate into the conduct of said prisoner since the date at which his parole was refused, and if, in the opinion of said Board, said prisoner's conduct has, during said period, been such as to entitle him to be discharged on parole, said Board shall order such discharge. Otherwise, said prisoner shall be required to serve the maximum period of imprisonment fixed in the sentence, subject to commutation for good behavior.

Section 5. Be it further enacted, etc., That whenever a prisoner shall have been paroled, his parole shall expire only with the expiration of the maximum term of imprisonment fixed in the sentence, unless the Board of Parole shall, in its discretion, reduce the term thereof, and, upon being paroled, every prisoner shall be required to promise that he will keep the peace and be of good behavior

until the expiration of his parole, and should any person, after his release on parole, be charged with any violation of the same, he shall be arrested by the Sheriff and brought before the District Court in the parish in which such violation is charged to have taken place; and if, upon the trial of said charge the court shall decide that the paroled prisoner has in fact violated his parole, the court shall remand him to the Penitentiary from which he was paroled, there to serve out the whole time for which his parole was given, subject to the deduction of the time which he had served prior to his parole and to any commutation for good behavior that he shall thereafter earn.

Section 6. Be it further enacted, etc., That every paroled prisoner shall upon his being discharged upon parole be furnished with serviceable suit of clothes, with transportation to such place as he may elect to go within the State of Louisiana, and five dollars in money.

Section 7. Be it further enacted, etc., That all the expenses incident to the carrying out of this law shall be paid out of the Penitentiary Fund.

Section 8. Be it further enacted, etc., That all laws or parts of laws contrary to or in conflict with the provisions of this Act be and the same are hereby repealed.—Senate Bill No. 71. W. I. Hart, New Orleans.

Recently Enacted Indeterminate Sentence Law for Louisiana.—An Act to provide for the imposition of an indeterminate sentence upon persons sentenced to imprisonment in the State Penitentiary at hard labor otherwise than for life.

Be it enacted by the General Assembly of the State of Louisiana, That whenever any person shall, after the adoption of this Act, be sentenced to imprisonment in the State Penitentiary or at hard labor, otherwise than for life, or where the maximum penalty does not exceed one year, it shall be the duty of the District Judge to sentence such person to an indeterminate sentence, the minimum of which sentence shall not be less than the minimum term of imprisonment fixed by the statute under which such person shall have been convicted, and the maximum not more than the maximum fixed in such statute; provided that where no minimum term is fixed in such statutes said minimum term shall be taken and intended as being one year.—Senate Bill No. 72. W. I. Hart.

Proposed Payment of Prisoners in Louisiana.—An Act to authorize the Board of Control of the State Penitentiary in its discretion to provide pecuniary assistance to prisoners and their families.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the Board of Control of the State Penitentiary be, and it is hereby authorized and empowered to provide for the payment of prisoners confined in the Penitentiary or on State Farms; or in any State Reformatory, such portion not less than twenty per cent. of the earnings of said prisoners, as it may deem proper, under such rules and regulations as it may prescribe. Such earnings shall be paid out of the appropriations hereinafter made.

Section 2. Be it further enacted, etc., That any moneys arising under Section 1 of this Act may be used for the benefit of the family or dependents of the prisoner, under such regulations as the Board may prescribe; but, no payment shall be made to any prisoner until the time of his discharge or release on parole, and shall be estimated at so much per day, or so much percentage of the amount earned for the State by the prisoner, as the Board may determine. And the Board shall keep an account of each prisoner, showing what he would be entitled to under the terms of this Act, and under the rules adopted by the Board.

Section 3. Be it further enacted, etc., That in order to carry out the provisions of this Act, there is hereby appropriated out of the General Fund for the year 1915 the sum of Five Thousand Dollars, and for year 1916 the sum of Five Thousand Dollars.—W. I. Hart.

Public Defender in Alessandria.—This Piedmontese city has the unique distinction of having the only "public defender" in Italy. A ministerial order of Feb. 23, 1913, redefining the duties and privileges of this office, brings to light its interesting history. The Abbe Cesare Ferrufino, jurisconsult, left by will and codicil in 1669-70 a foundation for the purpose of providing free defense for "pious works" and for the poor of the city of Alessandria and its vicinity. Also the foundation required readings or lectures on the institutes of civil and canonical law. The Officials for carrying out the purposes of the foundation were two in number, an *avvocato* and a *procuratore dei poveri,* to be chosen by the College of Doctors of the city from among the secular clergy (other things being equal, from those of Alessandria itself). The College accepted its task and for a considerable time seems to have carried out faithfully the wishes of the testator. But after the suppression of the College in the second half of the eighteenth century the royal government took over the function of nominating the officers, taking no account of the origin of the foundatio nor the sacerdotalism involved. The duty of lecturing on law also fell into desuetude. The officers were henceforward considered as real public officials and in addition to the income from the foundation were allotted a stipend from public funds. This public character of the foundation was recognized by the Piedmontese Council of State in 1849, and by law in 1865. The recent ministerial order reaffirms its public character and integrates the office with the general administrative system. The *avvocato* and *procuratore dei poveri* are to be appointed by royal decree upon nomination of the Minister of Justice. The *avvocato* must give free consultations to the poor in both civil and criminal matters, cases relating to contracts, to conditional liberation, to complaints, etc. He may demand from applicants certificates showing their inability to pay. He cannot accept from his clients either money or other things, even if they are offered spontaneously. Cases may be assigned to him or removed to other defenders by the *Commissione del gratutio patrocinio,* which corresponds somewhat roughly to our Legal Aid Associations. *(Rivista Penale,* July, 1913.)

A. J. T.

Longhi on Attempted Abortion.—Silvio Longhi has an article in the Jan.-Feb. number of *Il Progresso del Diritto Criminale* on *Tentativo di Aborto Consentito,* in which he takes up the reasons *pro* and *con* governing the constitution of an attempted abortion to which the woman has consented, as a crime. The chief reason for not permitting such an act to be prosecuted is the abuse to which it might be put, while the reason in favor of it is its deterring effect on repetitions of the attempt. Taking up these reasons Longhi then proceeds to deal with the technical phases of the Italian law upon the subject. But they are the reasons of general application that are of interest, showing, as they do, that what is to us a closed question, is still for many an open one. Longhi considers the encouragement given not to the repetition of the attempt but to illicit intercourse, which we submit, is a controlling motive in English legislation on the subject.

J. L.

Provisional Liberty and the New Italian Code.—The new Italian penal code is evidently not the high water mark of modern criminalistic science if one can judge from the lively attacks made upon it in the current periodical literature. Whether the vision of Italian legislators has been obfuscated by the Lombrosian bogie of the born criminal or for some other curious reason, the new penal code extends the privilege of suspended sentence or "provisional liberty" only to persons accused of offences which under the law are liable to penalties of imprisonment for a minimum of five years. Sig. de Mauro protests that this drops not only below the so-called Mancini law of 1876, which introduced the principle of provisional liberty to Italian law, and of course below the English and North American practice, but even below the codes of Russia, or the canton of Neuchatel, and also the old French law of 1865. At least this much of the principle remains, that the judge may grant a hearing upon the application for provisional liberty at any stage of the proceedings, even pending an appeal. No special formula is prescribed for an application for provisional liberty. *(Giambattista de Mauro, Rivista Penale,* Aug., 1913.)

A. J. T.

Jewish Criminal Law.—Francesco Scatuto's *"Diritto Penale Ebraico,"* in the Jan.-Feb. and March-April numbers of *Il Progresso del Diritto Criminale* contains an interesting resume of the provisions of Jewish law against criminals. It first gives the origin of the courts and procedure, together with an outline of the method of the promulgation of statutes. Then he takes up the organization of the courts. Thereafter, Scatuto takes up the provisions for different crimes. But he lays particular stress on the efforts of the judges to look into every phase of the case before them and to see that their decrees are just. He also points out the religious aspects of crime in the minds of the Jews, not because he regards this as distinctive of a past phase of civilization, but because he considers it rather as a peculiarity of the Biblical people.

J. L.

Counsel for the Poor in England.—In the issue of June 13th of *The New Statesman,* a weekly review of politics and literature published in London, at pages 291 and 292, appears the following:

> "A considerable advance towards cheap justice for poor people is made by the new Order of the Supreme Court, which came into force this week. Scotland has long had a fairly satisfactory system; but in England the procedure *in forma pauperis,* which was the poor litigant's only avenue to the High Court (failing a speculative solicitor), had so many drawbacks as to be seldom used. Probably few people but those who have acted as Poor Man's Lawyer at a social settlement have any conception of the amount of hardship consequently entailed on the English working and lower middle classes. The new Order, under Lord Haldane's influence, assimilates the English procedure to the Scottish. Two lists are to be drawn up, each including both solicitors and counsel. The members of the first list act much as the Poor Man's Lawyer; they tell the would-be litigant whether he has a case. If they certify that he has, he can claim to have it fought by a solicitor and counsel from the second list. Counsel are to be unpaid in all cases; but a fund is being raised by subscription towards paying the solicitors, who also, where money has been recovered, are to have a limited claim in it for costs."

In the issue of June 27th of the periodical referred to above at pages 363 and 364, there appears an article entitled "The Poor Man and the Law." This article starts with the following statement: "The essence of the new Rules

of the Supreme Court (Poor Persons) is that they appear calculated to achieve in practice what had previously been only achieved in theory, viz., the complete opening of the Courts to the poor." The article is a trifle over fifteen hundred words in length.

> It is stated in this article that "The key to the new system is found in the fact that it remedies the defect of the old system by the establishment of what is virtually an 'exchange,' by means of which litigants anxious to have their cases conducted free will be put in touch with those lawyers who are ready to conduct them free. This 'exchange' consists of lists of counsels and solicitors who are prepared (a) to report on the prospects of the case and on the poverty of the poor person (one may mention parenthetically that under the new rules the financial maximum is raised to the possession of assets worth £50); (b) to conduct the case. In order, moreover, to ensure the perfect impartiality of the report and its complete freedom from the personal equation, no solicitor or counsel can conduct any case on which he has reported. The 'exchange' is under the control of an official known as the Poor Persons' Prescribed Officer, whose duty it is to send out cases to be reported on, and then, if the report be considered satisfactory, to assign solicitor and counsel to conduct the case gratis (though on the termination of a suit in favor of the poor litigant the court has the power to direct payment of moneys out of a fund which the Treasury is given power to establish)."

In this article the nature of the change involved is quite fully set forth based upon a brief scrutiny of the working of the old *in forma pauperis* rules which are thus superceded. The article also gives consideration to "the substantive effect of the new system on litigants, on solicitors, and on the Bar." It seems that some four hundred solicitors and two hundred and fifty members of the Bar have joined in the panel, from which it is "self-evident that any poor person with a reasonably good case will be enabled to have his case conducted by solicitor and counsel assigned to him by the court." It occurs to me that one of the most significant statements in this article is that "One may add that if the machinery of the new rules does prove an effective competitor to the speculative solicitor, the rich defendant will also experience the benefit, as he will be spared the annoyance of fighting or settling actions whose sting lies in their blackmailing quality rather than their intrinsic chance of success (*e. g.*, the breach of promise action supported by infinitesimal, if any, evidence of an actual promise, but relying for its strength on sexual relationship, and if possible a child)." R. S. GRAY, San Francisco.

Report of the Court of Special Sessions in New York City.—The report of the Court of Special Sessions of the City of New York, covering the year ending December 31, 1913, has just been issued. It is an important document, the gist of which may be gleaned from the preface, which is reproduced here in complete form.—[Eds.]

HONORABLE ISAAC FRANKLIN RUSSELL,

Chief Justice.

Sir:—Pursuant to the provisions of Section 18, Chapter 659 of the Laws of 1910, I beg leave to submit herewith a report of the business of the Court of Special Sessions and the Children's Courts of the City of New York for the year 1913, and the attendance and proceedings of the Justices thereof.

The composite report of the work of the five adult parts of the Court is in striking comparison with the report for the year 1912, wherein it was disclosed that there were many decreases in various classes of crime for the preceding year, whereas in the year 1913 a remarkable increase is shown. We have

received 16,506 cases as compared with 11,740 cases in 1912, an increase of almost forty-one per cent. Remarkable as it may seem, there is a large increase in 1913 in certain cases enumerated below which showed a decrease in 1912 over 1911:

	Decrease in 1912 over 1911	Increase in 1913 over 1912
Assault	377	493
Disorderly House	125	103
Petit Larceny	242	469
Liquor Tax	55	179
Transfer Ticket Law	50	20
Unlawfully Possessing Revolver	707	179

A further increase is noted in violations of the Labor Law wherein there was an increase of

1912 over 1911	1913 over 1912
416	1,139

The largest increase of all is noted in violations of the provisions of the sanitary Code, which showed an increase of

1912 over 1911	1913 over 1912
307	1,154

The "Unclassified" list has been kept as heretofore for the reason that the operation of the Factory Law, Fire Prevention, etc., has been in force for a few months of the year 1913. These classes of cases, together with the Possession of Cocaine, make up nearly 1,100 cases of the 1,896 considered as unclassified. The remainder of the unclassified is composed of Unlicensed Dance Halls, Unlicensed Plumbers, Unlicensed Moving Picture Operators and Riding on Freight Trains.

A further comparison of the figures shows that while there were 4,662 convictions by pleas of guilty in 1912, there were 7,533 convictions by pleas in 1913. This is an increase of 2,871 as against a decrease of 922 in 1912 over 1911. The major portion of the increase in pleas of guilty during the past year was in violation of the Labor Law, Petit Larceny, Sanitary Code and Fire Prevention. The most notable increase to be commented upon is in violations of the Labor Law. There were 2,365 cases received, of which 223 were convicted by trial, 2,013 pleaded guilty, 69 acquitted and 29 were dismissed.

A comparison by counties shows that there were 9,551 cases received in New York County as against 7,106 in 1912—an increase of 2,445 cases or 34 1-3 per cent. In Kings County there were 5,836 cases received, as compared with 3,924 in 1912—an increase of 1,912 cases, almost 50 per cent. In Queens County 838 cases were received as compared with 486 in 1912. This is an increase of over 73 per cent, thus showing the largest increase in percentage of the business in any of the counties during the past year. In Richmond there were 281 cases received, as against 224 in the year 1912, practically only a normal increase.

In the matter of the composite report of the Children's Courts it is possibly well to observe that, notwithstanding the increase in population, the total number of children charged wih Juvenile Delinquency and also arrainged in Special Proceedings is but 14,969 for the year 1913 as compared with 15,706 for 1912. A further comparison of the reports of the Children's Courts will not be undertaken by me at this time for the reason that I am presenting in somewhat extended form a list of tables and charts of the work in the New

York County Children's Court which cannot be set up in comparison with the other counties because of the lack of time and space.

Three years and a half have passed since the Inferior Criminal Courts Act of 1910 went into operation, long enough, perhaps, to test the practical workings of that enactment. The steady growth and progress of the city are revealed, in part, through the statistics and financial records of this Court. It does not necessarily follow that advancement in population, wealth, and refinement, means increase in crime. Nor is it true that the criminal habits and practices of mankind keep an even pace with the numbers of the population. The statistics of crime often defy all ordinary powers of analysis and make the interpretation of social phenomena most difficult. Thus, in our present report, it appears, in substance, that the number of cases on the calendar of this Court in Kings County (Brooklyn), as compared with the year 1912, shows an increase of approximately 1900. No resident of Brooklyn, pursuing the simple life, could possibly note such an increase in crime, or any increase at all so far as the external order of human conduct is concerned in that Borough, and the peace of society there so well preserved by those charged with that duty in our civil society. In fact, the District Attorney of Kings County is on record as saying that practically there was no increase of crime in Brooklyn during the year 1913. But if such a rate of advancing criminality as that indicated by mere figures were to prevail in all the five counties of the greater city we would surely have a perfect carnival of crime in a few years. Under the policy that distinguished the administration of the late Mayor Gaynor the number of arrests in the city declined from 250,000 annually to about one half that number. This was due almost wholly to the larger use made of the summons.

We believe and hope that with expanding civilization mankind must see a noteworthy decrease in offenses involving moral turpitude. This era, with a comparatively new theory of criminal penalty, we see even now inaugurated.

The conditions surrounding human life in great cities seem to call for an ever strengthening hold of the municipal government on the regimen of ordinary family and commercial life. The various departments and bureaus that divide the executive authority are reaching out for a greater and greater control. To detail the work of the Department of Health would be to write a book. The purveyors of milk and food within the city are held strictly to an implicit obedience to a law of rapidly-expanding stringency. The burden of adjudication in such cases is on this Court; and the aim of the Justices is ever to stand for a reasonable and equal enforcement of all so-called police regulations, affecting the internal order and economy of society.

Similiarly with the newly organized bureau of Fire Prevention, the Court of Special Sessions has the authority under the statute to punish offenders who imperil human life by smoking in factories, or by locking the doors that furnish exit from buildings in case of fire. The wisdom of the new ordinances has been learned at awful cost in flesh and blood; and the Court is fully alive to a situation which the Fire Department has met with a result so successful that fires in the City of New York have been reduced by thousands within the past year.

The enforcement of the Tenement House Law, as respects sanitary conditions, also makes an important demand upon the time and attention of the

Court, which can only be properly appreciated by those who contemplate the magnitude of the City, its wide area and enormous population.

The list of offenses that are *mala prohibita* and do not necessarily involve moral turpitude in the transgressor, is thus continually lengthening; and no sober judgment can pronounce that real crime, as ordinarily understood, is increasing in New York.

During the current year the Board of Estimate and Apportionment made provision for a Deputy Chief Probation Officer, at a salary of $2,000. On June 16, 1913, the Board of Justices elected Mrs. Anna L. Gaffney to fill that position. The labors of the Chief Probation Officer are considerably lightened by his assistant whose duty it is to interest herself personally in the cases investigated by the individual probation officers, and aid them in every possible way.

The Board of Estimate and Apportionment has generously allowed in the budget for 1914, an increase in salary for ten male and five female probation officers, the present salary being $1,200 per annum, and the proposed salary $1,500 per annum. The officers to be selected for the increase in pay have been chosen solely on the grounds of merit and efficiency. This gives an incentive for good faithful work on the part of such officers.

Since July 1, 1910, forty-three new probation officers have been appointed for the Court of Special Sessions and the Children's Courts. Of these, twenty-nine are male and fourteen female. Together with those officers who were formerly engaged in probation work in this court, who either served gratuitously or were paid from private funds, the whole number of probation officers now employed exclusive of the Chief and Deputy Chief Probation Officers, is forty-nine—of whom thirty-one are male and eighteen female. Of the total number of offices, eight males and one female are assigned to the Court of Special Sessions, New York County; four males and one female to the Court of Special Sessions in Kings County; one male (paid officer) and one female (volunteer) to the Special Sessions, Queens County; one male to the Special Sessions, Richmond County. (The same female officer serves both in the Court of Special Sessions and the Children's Court in Richmond County); thirteen males and ten females in the Children's Court, New York County; four males and three females in the Children's Court, Kings County; two females in the Children's Court, Queens County. (The same male officer acting in both the Adult and the Children's Court, Queens County); one female (paid officer) and one female (volunteer) in the Children's Court, Richmond County. (The same male officer acting in both the Adult and the Children's Court, Richmond County.)

With this adequate and efficient staff of workers, the Chief Probation Officer and the Deputy Chief Probation Officer are able to do a vast amount of work in the reformation and moral rehabilitation of both adult and juvenile delinquents. This court is, perhaps, the only important tribunal, that thus deals with both adult and juvenile offenders by means of probation. The development and expansion of the work of probation, particularly with juvenile delinquents, is a marked feature of our recent progress. The work of reclaiming delinquents proceeds along strictly scientific lines and is in full accord with the best and latest thought of trained penologists. As a feature of this new procedure the reports of probationers are no longer heard in public crowded court-rooms, in the presence and hearing of curiosity seekers, but are rendered *in camera*, as it were, apart from spectators, and, as far as possible, in the evening. These hours are

selected in the interest of the probationers and in order to make it unnecessary for them to sacrifice the wages of their daily employment.

For many years, the old and dilapidated building at 66 Third Avenue has been an eye-sore to all good citizens who had the interest of the work with juvenile delinquents at heart. At last, through the good offices of the Board of Estimate and Apportionment, $335,000 was appropriated for the erection of a model building. On August 11, 1913, the corner stone was laid, and appropriate addresses were delivered by Borough President McAneny, Chief Justice Russell and Justice Hoyt. The friends of the Children's Court are looking forward with the greatest expectations to rapid improvement in the work of the court when the new and adequate facilities of the building now rising are available.

For some years past the interest of penologists in phychopathic and psychiatric analysis and experimentation has been great and growing. All now recognize that what is sometimes called crime or delinquency, and what at best is an unfortunate happening, may be treated pathologically instead of morally, and may be conceived as the necessary result of irresistible physical forces rather than the deliberately chosen end of voluntary moral action. Definitely known drugs stimulate sleep, thirst and various animal appetites; other drugs suppress these energies. Music and visions, rest, quiet and summer skies sooth and calm the mind and nervous system, disordered and weakened by the stress and strain of prolonged labor and excitement. Tonsils, appendices and adenoids are often sacrificed with beneficial results. In this way medicine and surgery contribute to solve the problems of criminologists.

Abnormal man frequently appears at the bar of criminal tribunals; and common justice demands that we make a scientific estimate of his capacity for what we have been in the habit of calling free moral action. Does he know the nature and quality of the act which he has committeed and for which he has been arraigned? This is the crucial question. It can only be answered by the trained scientific observer, and, in many instances, only after prolonged and patient investigations. This demands laboratories with expensive apparatus and equipment and a staff of specially trained experts. Progress in such a field must necessarily be slow. Theorists and faddists, actuated by an honest but misguided enthusiasm, can only delay and embarrass the work of reform. Not all the defendants who appear in the Children's Courts need the services of these trained experts. The impulses that prompt a boy to take an apple and eat it, to leave school for the playground, and to seek the companionship of spirits kindred to his own, are pretty well known and accurately estimated by the judges of the juvenile courts who have been called upon to adjudicate thousands of cases.

But the exceptional case does appear, perhaps daily in this city, when the last word and the best word of the skilled psychiatrist must be spoken. Appropriations of public money are needed for this purpose and can hardly be gotten till public sentiment is cultivated and aroused.

The Inferior Criminal Courts Act was amended by Chapter 691 of the Laws of 1913, and provision was made for the examination and commitment of mentally defective and feeble-minded children, by Justices sitting in the Children's Court. A written report must be submitted to the Court before the final disposition in the case of a child arraigned, where there is reason to believe that the child is mentally defective. The examination is to be made only when

directed by the court and is to be conducted by one or more physicians. If found mentally defective the child may be committed to some public institution authorized by law to receive mentally defective and feeble-minded persons.

This act empowered the Mayor to appoint three physicians to be medical examiners in the Children's Court and to hold office at the pleasure of the Mayor. The budget for 1914 provides for the payment of their compensation as fixed by law. On the nomination of the Board of Justices the Mayor appointed Dr. Max G. Schlapp and Dr. D. A. McAuliffe of the Borough of Manhattan and Dr. W. Berry of the Borough of Brooklyn. A stenographer has also been provided for. Rooms and office accommodations for this work have been furnished by the Commissioner of Charities at the Post Graduate Hospital. FRANK W. SMITH, *Chief Clerk.*

The Office of Public Defender in Los Angeles.—In a recent issue of this JOURNAL we published extracts from a pamphlet by Walton Wood, Public Defender of Los Angeles County, California. A new edition of that pamphlet is at hand and we publish here the introduction; a letter, dated June 3, 1914, and addressed to Terence J. McManus, Esq., Secretary of the Committee on Criminal Procedure of the New York County Lawyers' Association. The letter follows.—[Eds.]:

"So many calls have come to my office for the pamphlet which we recently published concerning the work of the public defender that the original edition has been exhausted. In order to comply with the request of your committee for thirty copies of the pamphlet it has been necessary to prepare a second edition. I am very glad that the Lawyers' Association of New York has taken up this matter and I will be pleased to furnish any further information available.

"It has occurred to me that a possible objection might be raised by some who might think that the public defender is a counterpart of the district attorney and would naturally endeavor to undo the work of the prosecuting officer. This, however, is far from the true conception of the office. In considering this matter great emphasis should be placed upon the fact that the public defender is not the reverse of the district attorney. It is not his duty to undermine the work of the prosecutor, nor to secure acquittals regardless of the merits of the case. It is his duty, however, to bring out the facts and the law in favor of the accused. Wherever the defendant is not able to employ his own attorney the office of the public defender is the proper means of investigating the facts in his behalf and presenting them to the court. The work of the public defender is not experimental. Constitutions and state laws have long guaranteed to accused persons an ample defense and a qualified attorney to represent them. In many states a small fee is allowed by statute to the attorney appointed by the court. In other states, California among them, no fee whatever is provided by law for the attorney and no means whatever provided for defraying the expenses of preparing the defense. The creation of the office of public defender simply puts on a reasonable and efficient basis the defense which the law has always pretended to safeguard.

"In Los Angeles the district attorney and the public defender are working harmoniously together. We are doing what the district attorney tried to do in many cases but which, on account of conditions which could not be overcome,

he was unable to do. We are daily advising the accused of their rights. We are informing them of the law covering the crime of which they may be charged. We are listening to their side of the story and are bringing out whatever points there may be in favor of the defendants, at the same time doing nothing to hamper or delay the administration of justice. Many of our clients come by recommendation from the office of the district attorney, others come from officials at the county jail and others at the request of the judges.

"As an example of the co-operation of the District Attorney and the Public Defender I might cite the case of Frank Walden, who is now awaiting trial on a charge of murder. The only possible defense for Walden is insanity and there is a serious doubt as to his mental condition. It has been the universal custom in cases of this kind for each side to employ alienists, and it is well known that in very many cases alienists are employed who are known to be prone to favor the side that employs them. The District Attorney and the Public Defender in this case have united in asking the court to appoint three able alienists who will serve as the only expert witnesses in the case. This marks a new step in the administration of justice, at least in this part of the country. We are taking the best method of arriving at the truth.

"I call attention to the statement in the letter of Judge Willis that our office 'has been a great saving to the county in the matter of expense.' This is a very remarkable statement, yet I believe it is absolutely true. We have had a number of cases dismissed by talking frankly with the District Attorney and showing him that a trial would result in acquittal. He has, in such cases, dismissed the prosecution. In other cases we have been able to avoid delays and by having attorneys who are familiar with criminal procedure in court at all times the Court has been able to dispatch business much more rapidly. In the matter of expense the same condition, to some extent prevails in the civil department of our work, where we relieve the courts of many contested cases by adjusting them without filing suit.

"Civil matters continue to require about half of the time of the office force. Too much emphasis can not be put upon the importance of this department of our work. We have all heard people of limited means say that the courts are only for the wealthy. Thinking people have realized that a very large proportion of our citizens are regarding the courts in this light. When we consider that so many of our citizens are wage earners who have small legal difficulties and that it costs more to solve these difficulties than can be obtained by the remedy, it is not surprising that the opinion is so prevalent that the courts are only for the wealthy.

"Our office does a great deal to help this condition by reducing the expense to a minimum. We are daily adjusting disputes between wage earners and employers and between others who are financially unable to employ attorneys. In most cases both sides are willing to trust the decision of the public defender.

"As an example of what our office can accomplish I might cite the case of one E. R—, who was convicted of a misdemeanor in one of the courts in which we are not authorized to appear and sentenced to serve one hundred days in the county jail. His offense consisted in selling a ticket for a raffle on his watch, without a license. At the time of his arrest he was without funds and had been ill for some time, having lost his employment on that account. He had a wife who was dependent upon him for support, she being crippled and almost

unable to walk. In desperation he took this means of raising funds and was promptly arrested. His wife was cared for by a friend who was not financially able to bear the expense. After R— had served about one month of his time the lady who had befriended his wife, being no longer able to support her, appealed to the district attorney in an effort to secure his release. The law did not make provision for the district attorney or the public defender or any other official to present the application for parole. There being no other official to attend to this matter, Mr. W. J. Ford, Chief Deputy District Attorney, in the interest of justice, addressed to this office the following communication, dated April 30, 1914:

'Dear Sir:

"'We are frequently asked to grant parole to prisoners who are not represented by counsel, and as a consequence the paroles presented by this class of persons are seldom in accord with the rules and regulations of the Parole Commission.

"'We require that the prisoner make an application, setting forth the details of the crime, etc., according to the provisions of subdivision 3 of the document hereunto attached. We also require papers from the judge of the court, the arresting officer and, usually, from the prosecuting witness; and so far as this office individually is concerned we require a report from the sheriff or jailer concerning the prisoner's conduct while in jail.

"'I have referred the present application to the sheriff and asked him to indicate his approval by signing the parole before I would agree to sign same. Mr. Hammel is unwilling to do this unless we signify our desire to grant the parole. I am therefore referring the bearer to you in the hope that you may find it consistent with the duties of your office to grant the required aid to this lady.

"'As these paroles are applicable only to misdemeanor cases, it may be that you consider it technically outside the scope of your authority; but I know of no other office which can give the matter the same intelligent attention that it deserves, unless the applicant has means to employ an attorney, in which case of course I would not expect you to help them in the matter.'

"'Yours very truly,

"'J. D. FREDERICKS, *District Attorney, Los Angeles.*'

"We at once investigated the matter, and following the legal requirements in matters of this kind, we secured Mr. R—'s release. Once out of jail, however, he was in but little better condition than before—out of employment, without funds and with a crippled wife. In addition to this his former landlady refused to allow him to return to the house which he had been renting and also refused to allow him to remove his personal effects, inasmuch as he was indebted to her in a small sum for room rent. He sought the help of David R. Faries, Assistant Public Defender, who made him a small loan, secured employment for him and took steps to release his personal effects from the landlady, who had no legal right to retain them, at the same time making arrangements with the landlady for her to receive the amount due. Shortly thereafter R— earned enough money to repay the loan to Mr. Faries and to settle his difficulties.

"This case illustrates three things which our office is doing: First, we worked in co-operation with the district attorney's office; second, we performed

a service which no other official could do; and third, we brought about redress in a civil matter in a case in which the party interested was entirely unable to do anything for himself.

"Many magazines and newspapers throughout the country have commented on our work and in every case which has come to our attention the comments have been favorable. Notable among the magazines which have endorsed the work being undertaken by our office are The World's Work, May, 1914, and The Outlook, March 28, 1914.

"In Los Angeles there are four departments of the Superior Court which are handling criminal cases. Two of these, presided over by Judges Willis and Craig, are devoted entirely to criminal cases, and two others, in which Judges Taft and Monroe preside, devote part of their time to the dispatch of criminal matters. I am appending hereto letters from these four judges, giving their views of the work we are doing. I am also enclosing a letter from the district attorney of Los Angeles County and letters from Judges Sidney N. Reeve and John W. Summerfield, who have handled a number of civil matters which have come to our office and who are well informed concerning the civil side of our work.

"All of the newspapers in Los Angeles have given support to the work of the public defender. The *Record* publishes a column in which citizens are often referred to this office for civil redress. The *Examiner* and the *Herald* have given publicity to our work and have shown their good-will in other ways. I am appending hereto excerpts from articles published in *The Times, The Tribune, The Express* and *The California Outlook.* (Excerpts referred to are omitted here.—EDS.)

"The number of cases being handled by the office is steadily increasing. At the date of the publication of the first edition of this pamphlet, March 17, 1914, the average number of civil cases each day was between nineteen and twenty. In the month of May, with twenty-five working days, there were 627 matters, an average of twenty-five per work day. Between January 14th and May 31st, we handled one hundred and sixty criminal cases, of which forty-three came to us in the month of May.

"Let me express the hope that the office of public defender will soon be created in New York and I know that the work of the office will be as satisfactory to the people of New York as it has been to the people of Los Angeles."

"WALTON J. WOOD,
"Public Defender, Los Angeles."

Punishment and Intent.—Michele Martazana in *"A proposito di delitti pretes intenzionale: du tema di legioni voluntarie sequita de aborto,"* published in the November-December number of *Il Progresso del Diritto Criminale,* takes up the question of the interpretation of that section of the Italian Penal Code which shows that the difficulties which the proposers of codification find in our confusion of common and statute law are not destroyed by a code. The section makes special provision for the punishment of assault upon an *enciente* woman, stating that a knowledge of the pregnancy is a prerequisite. This, of course, destroys the section providing for the punishment of him who inflicts a greater injury than he intends by his assault. The result can well be a defense to an aggravated assault on the ground that the proscutrix was pregnant and that he had no knowledge. It seems that the comfort of the system under which we do *not* work is often illusory. J. L.

IRISH PETTY SESSIONS MAGISTRATE

The Irish Petty Sessions Magistrate.—This unique character is a creation of modern political conditions. He hardly knows as much law as Coke or Blackstone, but in conceit and egotism he easily outrivals them. The accession of the "peasant" class to the magisterial bench has resulted in the frequent absence from the bench of the so-called "gentleman magistrates." In this country "class" will not mix with "mass," and certain people imagine that they are of a superior mould of clay to their fellow man. The gentleman magistrate will favor in his decisions the propertied classes; the peasant magistrate the vicious, idle, and criminal elements of society. Their procedure reminds one of the "Turkish Cadi," where the president is at once court and jury. How the bench is packed with absentee magistrates when a case of importance is on for hearing; the reason for this punctuality after a long period of "absenteeism" is easily discoverable in the fact that the appointments are all political ones, and given as a reward for years of active political services by the Secretary upon recommendations of the party leaders. That this procedure is pernicious to an extreme no one of ordinary intelligence will deny; their decisions today are of such a partisan nature that "police court justice" in Ireland is a howling farce and a burlesque upon common sense and fair play. Their decisions are somewhat like those of the judge in Rabelais who in deciding cases used "big dice for big cases," and small dice for small cases, and shook them; but the judge in Rabelais did not blend his decisions with his future commercial interests, or traffic in justice for personal exploitation, and self-aggrandizement. The decision of a bench of magistrates at times is predicted almost a week before the court opens; the character of the man and the nature of his crime are but mere details in the decision of the case. The "pull" is just as strong here as in any other part of the world; the politics of the accused is important evidence, not legal of course, but it plays an important part in the disposition of the case. Decisions can be forecasted when one knows the political complexion of the bench; the result is that we have at hand all those extraneous matters which vitally affect the decision of the case, the evidence is secondary, and in many instances we see miscarriage of justice. A "blackguard" who commits a heinous offense can escape with a light sentence if he happens to be an ex-soldier who served in the South African war; his lawyer can say that his mind was affected with the heat, and here we have a striking illustration of the old adage, "patriotism is the last refuge of a scoundrel." On the other hand if the defendant happens to be a "returned American," without any further evidence the penalty is increased; how a native born Irishman who left Ireland and merely sojourned a few years in America can be termed an American is a problem beyond my ability to solve. A bad character leaving Ireland will readily find vicious associates in America; and upon his return to Ireland from America we have a blending of the vicious types of the two countries. In like manner the good Irishman remains good in America; but the prejudice here is so strong against America that the good type of citizen is placed in the same category as the idle and vicious character. Why a respectable Irishman whom unfavorable circumstances forced to emigrate should be placed in the same class as the idle and vicious criminal who learned most of his deviltry and bad habits from the indiscriminate herding in barracks of individuals of all grades of depravity is a problem incapable of solution, and the magistrates who allow this prejudice to influence their decisions are false to their official oath, lacking in ordinary intelligence, and unfit to administer justice in the community. I know personally

that the magistrates move on terms of intimacy with people who in some instances become defendants before the court; the Petty Sessions court is rightly named; in many cases the business is of a trivial nature and administered by individuals of enormous conceit and limited education. The Royal Commission has recognized many of these defects, and offered suggestions tending toward a remedy, but they have only scratched the surface, as long as the government appoints men to perform important magisterial duties who know more about the price of beef, bacon, butter and eggs than they do about law, men to whom statutes and legal decisions are an unexplored wilderness; court procedure a labyrinth of ignorance, just so long will the common people cease to respect the courts, and the peace and safety of the country will always remain at the mercy of the idle and vicious elements of society.

JOSEPH MATTHEW SULLIVAN, Boston, Massachusetts.

The Prisoner's Life.—The following from the *New York Times* of July 17 is an admirable expression of the psychological effect of work, under proper conditions, upon the prisoner.—[EDS.]

"Reading of the Blackwell's Island riots, may I ask, When will this merely negative method of dealing with the problem of crime and punishment cease? Shall we ever have a constructive programme for the training—not simply the punishment—of prisoners in Sing Sing, Blackwell's Island, and other similar institutions? It is high time that we learned and put into practice a few fundamental principles of boy training, man training, and of human nature in general, which would put a stop to the riotous outbreaks and the brutal beatings and barbarous howlings that follow them in our penal institutions.

"The first principle is this: That punishment—mere punishment in itself—rarely does anybody any good. It is a negation. The evil deed—the crime—was a negation, a destructive act. The cure for it certainly does not lie in another negative experience. The remedy, if found at all, will develop through a constructive experience.

"The second principle is that the essential element in all constructive endeavor, whether a man is in prison or out of prison, is motive. If there is no motive in the prison life of these men except to reduce by 'good behavior' their term of sentence and submissively endure the dull, slow passing of time until their release, no moral reconstruction can be expected. The net results of the State's effort in such cases is liable to be a further blunting of the moral sense, less self-respect, and a greater contempt for the authority that imposes such a negative régime. The cue to a constructive programme lies in motivation. Every man, whether confined or free, should have something to live and work for. Without wholesome motives to live and work for he is worse off than the brute and quickly descends below its level.

"Doubtless most men in Blackwell's Island prison have friends or relatives whom they care for and who care for them. If they have neither of these, they may have interests or desires in life which are not criminal and which they look forward to when release comes. If the convict could do something for his family, relatives, or friends, or for any cause dear to him, such a privilege would introduce a constructive element into his otherwise gloomy, negative, and empty existence. It would give him something to live for even in prison.

"Introduce a wage system, piece-work, savings accounts, opportunity to use one's own earnings to improve and refine his own living conditions while in

prison, the privilege to send his earnings to relatives or those dependent upon him, and the curse of an empty, aimless, dead-level prison life will be lifted. Such a system would break up into thrifty, enterprising, individual units the stubborn, sullen, undifferentiated mass which now constitutes the prison population in Sing Sing and Blackwell's Island. R. R. REEDER.

Superintendent Asylum Society Orphanage."

"Hastings-on-Hudson, N. Y."

Infernos Termed Penitentiaries.—"Wilson, official druggist at Kingston Penitentiary, Ontario (one of the prisons maintained by Canada's federal government), is not a mere dispenser, but a sort of overseer charged with the duty of attending sick criminals who may suddenly need aid. The following extract from recent evidence of a guard before a Royal Commission of Investigation into conditions in the penitentiary was cited recently in debate by Mr. Edwards, Tory M. P. for Kingston, who had, last year, humanely instigated appointment of the commission:

> March 7—Called Wilson for convict Bunyan, suffering intense pains in stomach, at 12:15 A. M., and again at 2:30 A. M. Wilson refused to get up. Convict dies same morning.
>
> March 31—Convict Lottridge suffering from injury to thigh and from bed sores, called Wilson 4:30 A. M. Refused to get up. Convict died next day, April 1.
>
> April 14—Called Wilson 1:05 A. M., for convict Hamilton, was "suffering pains all over the body." Refused to get up. Convict died April 16.
>
> April 24—At 9 P. M., Wilson told him that the things for laying out the body of the convict who was expected to die were in cupboard. During night convict got worse and started shouting. Called Wilson 3:30 A. M. and again 4:45 A. M., asking him to give convict something to quiet him. He refused to get up, stating he could do nothing. Convict died that morning.
>
> Engledew reported Wilson to the warden for refusing to get up and also reported at Ottawa.

"On this the commissioners reported:

> "'Your Commissioners are of the opinion that these patients were practically beyond human aid and that in their case no hardship was inflicted by Wilson's failure to get up and see them.'

"Possibly absent-mindedness alone prevented the commissioners extending sympathy to Wilson, on the ground that his rest had been provokingly disturbed. The citation is presented here to indicate at once conditions in the penitentiary and the leniency with which officials there have been treated by the Royal Commissioners, who have made a kalsomining report in the opinion of the Tory M. P. Edwards. Yet the document is a revelation of prison horrors scarcely less atrocious than those which burned in the heart of Elizabeth Fry.

"Canadian federal politicians have been closely engaged for two generations in problems of settlement and development and portioning the products of the industrious amongst grafting financiers and railway promoters and manufacturers. Hence Parliament had little or no time for consideration for the kind of criminals who get into prison, though some of these were moving straight toward knighthood when, having gone broke, they suffered the pangs of exposure, arrest, and conviction. Though the prison system administered by the government of Province of Ontario is modern, humane, sensible, reformatory in the highest degree, the Ottawa government maintains sundry establishments whose interiors resemble many of mankind's worst dreams of hell. These

places of torment are each nominally under a warden, who is nominally responsible to the Ministry of Justice. But the wardens are mere figureheads in respect of administration. They are politicians with fat salaries, appointed in reward of past party services, expected to do little or nothing more than have a good time. The deputy warden, also a political appointee, is in charge, with great authority. Yet he has, in prudence, to take on as guards, etc., such men as local politicians favor. When the deputy warden is, either naturally or by induration, a devil, then the guards and other underlings naturally become his fit satellites. There are inspectors, but it is easy to understand that they naturally sympathize with the regnant powers, and outrage, in effect, Oh, what's the use? when stirred by conscience or complaint to meditate or recommend reform. Conceive also a continual war between the Orange and the Roman Catholic officials of the prison—one set charging the other with favoritism to prisoners of their own breed—then you may have some faint notion of the state of affairs that has lasted so long in Kingston Penitentiary that the Royal Commissioners barred out evidence as to what was done there more than five years ago. Even the truth concerning the horrors of the last quinquennial was not thoroughly ascertainable, because such evidence as was not volunteered by angry, discharged guards, etc., had to be mostly dragged out of convicts in mortal fear of the deputy warden, etc., or from minor employees afraid of losing their jobs.

"One political party is neither more nor less than the other to blame for Kingston Penitentiary. A Tory government handed it to a Liberal government in 1896, just as it is today. A Liberal government handed it back to a Tory ministry nearly three years ago. As to conditions now, let us take the testimony of Mr. W. F. Nickle, M. P. for Kingston, elected as a Tory, but who has proved himself independent, and a real man—nowadays almost unique in our politics. In the insane ward he found 'fifty men of all types of insanity and with all classes of mental diseases, herded day after day in one long room. The melancholy and those whose insanity is the foolishness of the not fully developed are together. There is no such thing as segregation, no such thing as treatment, no such thing as exercise, no such thing as uplifting surroundings; but one great bare room in which are brought together fifty men, most of whom walk restlessly to and fro, though now and then one may be seen standing looking out to the great beyond across the lake. That asylum was condemned many years ago, yet government after government has failed to take steps to rectify the wrong. There are in that ward men who have suffered punishment after punishment—not once or twice only, but a dozen times; they have been subjected to every punishment because they could not submit themselves to a discipline they did not understand. They have been confined in the dungeon; they have been deprived of light, of food; they have been subjected to every indignity, and for what cause? Because those in authority failed to recognize mental derangement as distinguished from criminal intent.

"Go with me to the stone pile, where seventy men spend life in breaking stone. Day after day these men on the stone pile are engaged in labor that is not productive, that does not amount to anything, always the tireless clank, clank, clank of the hammers, and as the pile of broken stone grows other convicts remove it, while still others dump another load and the work goes on. And so, at the end of his time, a man leaves no better than he came, dwarfed in body and in soul, and feeling at war with humanity because of the system that

has robbed him of so much of his life. Then, take education. What is the House to say of a punitive system the heads of which say that children of fifteen and sixteen are not entitled to education, that the penitentiary is a punitive institution, that the judges send men there to be kept, not to be educated; who say that if you educate the child you make him, perhaps, a more dangerous criminal. Perhaps you may in an odd case, but is not the thing worth trying when you have twenty or thirty boys to consider? And has society no duty to these children? I have known a boy of fifteen, in knickerbockers, brought to Kingston handcuffed to a man who had been guilty of a most heinous and revolting crime. That child was sent to the penitentiary for stealing a workman's tools. You may say that that is a matter for the judge to decide. That is not the case, for these questions do not come before the judges. The question of the punishment to be meted out to these children often comes before the local magistrate. It is not always the character of the crime that determines whether the children shall go to penitentiary or not, but it is often the discretion of the magistrate as to the term; two years and over and you go to penitentiary; less than two years and you go to the reformatory. I say that if the administration of justice is to be left to magistrates who do not understand conditions, who do not appreciate the distinction between a reformatory and a penitentiary, then this country has a duty to the young children—because I say that a boy of fifteen or sixteen years of age is practically a child—to see that they are educated so that when their terms have expired they will be better fitted to resume their occupations in life and to make an honest, decent living for themselves.

"Then we come to the hospital, a great gloomy building, two stories in height, no outside cells. About ten or twelve feet back from each of the exterior walls runs a tier of cells, down the center of which is a corridor. One side of this building looks toward the gloomy, gray wall that bounds the penitentiary on the north; the other looks toward the south and is somewhat more sunny. Who are the caretakers of the sick? The convict orderlies. Where do they get their attention? From other convicts. What is the general outlook? Great, grated doors, with bands of steel or iron one and a half inches across, with openings between of perhaps one and a half, one and three-quarters or two inches. What happens? At night these poor fellows are locked up in these and the evidence has shown that in their desire for a drink men have slipped from the cots and fallen on the floor and had had to lie there during the night because they had not strength to get back into their cots. And yet we say we are a Christian, civilized country! * * *

"Commenting on the horrors of the evidence, which the Ministry have not yet allowed to be published, Mr. Edwards said: 'How is tubbing carried on? The convict's clothes are taken off, his feet are strapped together, his arms are strapped to his sides, and he is then immersed in a tub of water which may be ice cold or just moderately cold, depending on the season of the year. Many of them were tubbed in the months of January and February. These men, strapped as I have indicated, were shoved down under the water by the guards, and when they came up were shoved down again. As one guard testified, they were shoved down till the bubbles came to the surface. Just imagine it! Many of the men who were treated in this manner were of the insane kind. Guard Bryant gave evidence before the commission in regard to tubbing. He says he saw convicts with legs strapped together and arms strapped to the sides put into the water:

Q.—"They (the guards) would lift them up and put them in the water? A.—Yes.

Q.—Would they go right down below the surface? A.—They would just go down and up again.

Q.—Down below the surface? A.—Yes.

Q.—Would their heads go under the water? A.—Yes, their heads go under the water.

Q.—And picked up? A.—Picked up at once by the guard.

Q.—And go down and picked up again? A.—Yes.

Q.—Who would give that order? A.—By the authorities.

Q.—Who would that be? A.—Either the warden, the deputy warden, or the doctor could give that order.

Q.—Either one of the three? A.—Yes.

"Take the evidence of another man, Wesley Babcock, who helped in the tubbing:

Q.—"Ever see a prisoner put in the tub to give him a cold bath? A.—Yes.

Q.—Where was that. A.—Asylum.

Q.—By whose orders? A.—Mr. McWaters.

Q.—What office did he hold? A.—Acting keeper, I think, at the time.

Q.—Why was the tubbing done? A.—He insulted another officer.

"And this was an insane man!

Q.—"How did you proceed to punish this man? A.—Filled the tub with water and put him into it.

Q.—And held him down? A.—Yes.

Q.—In cold water? A.—Yes.

Q.—An insane patient? A.—Yes.

Q.—An insane patient who was guilty of insulting one of the officers, and who was subjected to this for punishment for the offence: that is right? A.—Yes.

Q.—How long did they keep him in the cold bath? A.—I could not tell you how long they kept him in. They kept him in till he gave up, till he said he was sorry for what he had done; that is all I know.

Q.—Was he held under the water? A.—Yes.

Q.—Was he there half an hour? A.—No, he would have been dead if he was.

Q.—Was he pushed down in the water? A.—He was.

Q.—Was he smothering when he came up? A.—He was.

Q.—Did you ever see blood coming out of the mouths and noses of convicts treated in that way? A.—Not out of him.

Q.—Did you like that treatment? A.—I would not want it myself.

"Now let us look at the evidence of Douglas Stewart in regard to hosing:

Q.—"You find this (hosing) more efficient (than the triangle)? A.—More effective.

Q.—What is it that makes it so effective with these convicts? A.—It takes the defiance out of them.

Q.—How? A.—If you got the hose you would know.

Q.—What is it? A.—I suppose it is the impact of the hose against the body, knocks the wind out of them.

Q.—And it seems to succeed where nothing else will? A.—Yes, it never failed yet.

Q.—To beat an incorrigible convict into submission? A.—Yes.

Q.—Is that the most severe punishment? A.—No, I think shooting is more severe.

Q.—You mean killing a man outright? A.—Yes.

"When Inspector Stewart was asked what pressure was on the hose, he said it would be sixty pounds to the inch.

"The evidence includes many thing as hideous and abominable, some much worse. Of course the Royal Commissioners inveighed against 'the system' and advised all manner of reforms. These will not be effected soon, because Parlia-

ment, after devoting many weeks to gabble on purely partisan affairs and more to gabble on the Mackenzie-Mann grab of forty-five millions, is about to adjourn for six months or so. No time left to deal thoroughly with the various federal infernos termed penitentiaries! Perhaps the disposition of ministry and members to remodel Canadian prisons, for which they are responsible to God and man, may be stimulated by exposure of the shameful conditions in the United States and elsewhere abroad. That is why this contribution has been sent to *The Transcript."—E. W. Thomson* in the Boston *Transcript,* June 3, 1914.

The Treatment of the Misdemeanants.[1]—Who knows how many persons are confined in local jails in the United States? Who comprehends the magnitude of the problem involved? How many appreciate its relation to the individual, to his family, to society?

The Bureau of the Census tells us that 452,055 persons were committed to county and municipal prisons in 1910, under sentence or for non-payment of fine.[2] We call them misdemeanants. It is the name ordinarily given one whose offense the law does not deem sufficiently serious to warrant a state prison sentence. If the ratio of commitments to the whole number received is the same throughout the United States as in Indiana, it is probable that one and one-half million people annually come under the influence of these local prisons.

We know that jails are the spoil of partisan politics. They are maintained largely on the fee basis. Most of them were built without any proper idea of the purpose they were intended to serve. As a rule they are insanitary, they lack proper provision for separating the sexes and there is no means of employment. Often they are crowded beyond their capacity. There is little attempt to classify the prisoners. They congregate in the corridors and the older and more experienced in criminal ways instruct the others in vice, immorality and crime. In how many such institutions are women not only waited upon but searched by men?

The late Samuel J. Barrows once remarked: "Back in 1867 a committee of the New York Legislature said: 'There is no one source of crime more operative in the multiplication of thieves and burglars than the common jail,' and that statement still remains true of a large number of jails throughout the country."

Many of you heard Dr. F. H. Wines' scathing denunciation of these institutions.[3] Delegates to the International Prison Congress who visited this country in 1910, declared our local jail system as bad as it was centuries ago in Europe. "Every jail I saw ought to be wiped off the face of the earth," said Thomas Holmes, secretary of the Howard Association of London, and this was the general verdict of these distinguished prison officials and penologists. It was the idleness of the prisoners, the lack of fresh air, the indiscriminate mingling, the long delayed trials that impressed them so unfavorably. "I asked two colored men how long they would be in and they said they did not know; that they had waited eleven days for a trial," said Dr. Eugene Borel, professor

[1]Report of the Committee on Corrections presented by Amos W. Butler, Secretary Indiana Board of State Charities, Indianapolis, Chairman, before the National Conference of Charities and Correction at Memphis.
[2]Bulletin No. 121, Department of Commerce, Bureau of the Census.
[3]Proc. N. C. C. C., 1911, p. 52.

of law in the University of Geneva, Switzerland. "That is a shocking travesty of justice. In Europe a prisoner gets a hearing within twenty-four hours."

Yet under such conditions as these we detain hundreds of thousands of persons—the vagrant, the drunkard, the witness, the run-away boy, the first offender, the hardened criminal, the man awaiting trial, the convicted law-breaker. What can we expect but that they will degenerate in body, mind and morals? Even where work is provided, as is done in some larger jails and workhouses, it is under the old contract system, which we should all like to see abolished. In some states misdemeanants are employed on the public highways. However successful this may be in some parts of the country, it would probably not be in conformity with the public sense in the more thickly settled communities, or practicable to any great extent in the more northern latitudes.

The whole question of the apprehension, treatment and release of the misdemeanant is of tremendous importance. While prison reforms are coming with surprising rapidity, they have been confined largely to the felon. The misdemeanant has been neglected.

In the first place, what are the qualifications of the average policeman? Ordinarily he is without training or experience. His politics have usually had more to do with his appointment than any other consideration. What part can such a policeman play in an enlightened system of penology?

In a number of states the constitution proclaims that the penal code shall be founded on principles of reformation and not of vindictive justice. How far has that been interpreted in the statute laws? The provision of most of our state constitutions that justice shall be administered "speedily and without delay" is wholly forgotten. We generally think that the day of imprisonment for debt is past. Yet many jail prisoners are held for debt—the fine assessed against them. The man of means pays his fine and goes free; the man without money suffers imprisonment under conditions which menace health and morals. It frequently becomes necessary for his family to ask for help; sometimes he loses his job. If he becomes embittered, or vindictive, need we wonder at it?

The picture is not all dark. Here and there light is breaking through. We are coming to understand that the policeman can be a social agent, a next friend, an instructor in obedience to the law. We are beginning to regard as the best officer the one who makes the fewest, not the most arrests. In some cities women are being added to the police force, and there are police matrons, and jail matrons, and even women judges.

"Humanizing the courts" is an expression coming more and more into use. Instead of sending to jail men who are unable to pay their fines, judges are releasing them conditionally and giving them a chance to earn the money. The plan works admirably. Judges are finding that their confidence is seldom misplaced. This principle has been enacted into law in Massachusetts and other states. Elsewhere it has been practiced without special authority of law. In New York State the probation law provides for the collection of fines on probation and also for restitution on probation.

We are further coming to believe that too many persons are sent to prison. Some states have adopted a system of probation, under which many law-breakers are reclaimed to society without the stigma of a prison sentence. Probation has been successfully tried in Massachusetts, New York and other states.

We have learned too, the value of the farm colony for the open air

employment of almost all classes of public wards. This has been applied to the insane in Wisconsin, Massachusetts and Indiana; to epileptics in New York, New Jersey and Indiana; to feeble-minded in Massachusetts, New Jersey and Indiana; to both dependent and delinquent children in many states, and more recently to certain classes of prisoners including all kinds of misdemeanants of both sexes. What is being done at Cleveland, at Occoquan and at Guelph is well known. The most recent development of this movement is the New York State Farm for women misdemeanants. The simple, inexpensive, yet substantial form of buildings, the freer life and the opportunity to contribute in part at least to their own support, make it far better for the inmates and cheaper to the taxpayer.

In Indiana the first step in this direction came about through the establishment in 1907 of a state workhouse for women misdemeanants, as a branch of the Woman's Prison at Indianapolis. The institution is entirely in control of women. Then the Board of State Charities began a vigorous campaign for a state farm for male misdemeanants. Conditions in the county jails were shown forth in the following paragraph:

HOW PRISONERS LIVE AND LEARN IN INDIANA COUNTY JAILS.

They live in idleness at the expense of the taxpayer.
They learn vice, immorality and crime.
They become educated in criminal ways.
They degenerate both physically and morally.

In 1913 an appropriation was secured, the land has now been purchased, and work on the buildings will soon begin. The law contemplates that the construction work shall be done largely by State Prison and Reformatory men. The new institution is for men who have a jail sentence of sixty days or more, and prisoners may be transferred from the state institutions whenever room for them exists at the farm. Eventually there will probably be several such farms in the state, and this movement, with proper amendments to existing laws, should in time do away with the use of the county jails for the confinement of convicted offenders, and leave them only as places of detention.

We now look forward to the time when we shall have a form of indeterminate sentence for misdemeanants. The success of this form of sentence for felons in Indiana as in many other states justifies our belief that it will prove valuable in the treatment of misdemeanants. Certainly some improvement can be made over the present illogical short sentence, which benefits neither the individual nor the public, in whose name he is held.

New York has already taken an important step in this direction. Misdemeanants between the ages of sixteen and twenty-one are to be committed under an indeterminate sentence to the reformatory for this class of offenders, authorized by the legislature of 1912. The site for this new institution has not yet been located. It is the purpose of those interested to place it on a farm and to make it one of the most complete and modern of reformatories.

Another needed reform, state control of county jails, is receiving some attention. J. S. Gibbons, chairman of the Prison Board of Ireland, said: "I tell you what I think you lose sight of in this country—that all these splendid reformatories deal with merely a drop in the ocean compared with the county and city jails, to which your thousands of prisoners go and where many are

manufactured. We were in exactly the same condition up to 1877, when we brought county and city jails out from under local authorities in the United Kingdom. We found the antecedent to all reform was state centralization. In 1877 every prison and jail was put under central administrative authority and the expenses paid out of the imperial funds. Three acts were passed simultaneously for the three kingdoms. We then began at the bottom, closing all the superfluous ones, and in that way we were able to close about half."

I have the following statement from Sir Evelyn Ruggles-Brise, of England: "The Prison Act, 1877, transferred the local prisons of this country (*i. e.*, prisons for the confinement of all classes of prisoners other than those sentenced to penal servitude) from the control of local "Visiting Magistrates" to that of the State. The Act came into effect on the 1st of April, 1878, 113 local prisons being so transferred. Since that date, their number has been reduced to 56. At the time of their transfer, the local prison population stood at 21,030—the highest known. From that date a continuous fall was recorded until 1885, when the numbers reached slightly over 15,000. After a series of fluctuations below and above this number, the population stands at 15,000 at the present time. Relatively to the total population of the country, the figure for 1878 represented 686 committals per 100,000, while that for the year ended 31st March, 1912, was the lowest on record, viz., 439 per 100,000."

Massachusetts, perhaps, has led the agitation in this country for state control of county jails. In other states there has been some publicity in favor of such action. An offender against the Federal law becomes a prisoner of the United States and is under the direction of the Federal judge. Why should one who violates a state law not be a prisoner of the state? That is the theory which underlies the new law for jail supervision in Indiana. Offenders against the state law have been placed under the oversight and authority of the judge of the circuit or criminal court, who is a state officer. This judge may say where and how the prisoner shall be detained, and if the jail is unsatisfactory he may condemn it. He is authorized to prescribe rules formulated by the Board of State Charities, which has supervision of all jails and other public charitable and correctional institutions. A violation of these rules, once entered in his order book, is in effect a contempt of court.

While these advance steps have been taken, the reform is by no means general. Most of the states continue to use, unchanged, the system long since discarded in Europe, whence it came. The results are not reformatory. On the contrary, they are destructive alike to the individual and those with whom he later comes in contact. Local jails are recruiting stations for our larger state correctional institutions. We should make greater progress in reformation if we did not first pollute the stream we are going to treat.

The outlook is not bright, but it is by no means hopeless. The evils which exist are the natural result of the system we adopted. Let us change the system. Let us begin at the bottom and study all the steps in the treatment of the offender—his apprehension, detention, trial, conviction, probation, confinement, treatment, employment, conditional release, final discharge. Let us set as our goal:

1. A system of police recognizing character, merit and efficiency in the personnel and a proper social view for its operations.

2. A prompt hearing for every person arrested.

3. The establishment of juvenile courts for all children's cases.
4. Provision for the care and detention of delinquent children outside the jail.
5. A probation system for adults similar to that of juvenile courts.
6. Separate trials for women offenders.
7. A modification of the present system of fines in order not to discriminate against the poor.
8. Classification of prisoners, confinement of individuals apart from each other and absolute sex separation in county jails.
9. The prohibition of the use of the jail for any other purpose than that of temporary detention.
10. The abolition of the fee system.
11. State control of all minor prisons.
12. The establishment of industrial farms for convicted misdemeanants.
13. A form of indeterminate sentence for misdemeanants.
14. Their release on parole under supervision.
15. The abolition of contract labor.

The following members of the Committee on Corrections approve and sign the report:

Major R. W. McClaughry, Julian W. Mack, Arthur W. Towne, Frank E. Wade, Joseph P. Byers, John J. Sonsteby, Quincy A. Myers, W. H. Moyer, A. J. G. Wells, J. A. McCullough, John H. Dewitt and Archdeacon B. M. Spurr.

Mr. E. Stagg Whitin disagrees with what is said about the employment of convict labor on public highways in the more thickly settled northern states.

A. W. BUTLER,
Indianapolis.

A California Society for the Reform of Delinquents.—In Los Angeles a society has been formed with the object of assisting in reforming moral delinquents by psychological methods. Ministers, judges, probation officers and policemen are interested in it. The organization is open to all sects and creeds and expects not only to cure criminals but prevent persons from becoming criminal. Judge Curtis D. Wilbur of the Superior Court of Los Angeles has taken a great interest in the society and has offered several practical suggestions as to dealing with penny arcades, obscene literature, playground commissioners, labor laws and special legislation. Clergymen and their church members will be "big brothers and big sisters" to the wayward and study how to apply the laws of psychology to the delinquent in the best manner. It is hoped that all who will have to deal with delinquents may be trained to become capable mental physicians and thus help in reformation.

W. I. DAY, East Oakland, Cal.

POLICE.

Foreign and Domestic Police Systems.—The average student of police systems falls into the common error of overestimating the virtues of the English police and at the same time disparaging our own police system. He will go into ecstacies over the unexcelled system and superiority of "Scotland Yard," and will relate their successful ventures in the domain of police work and detective ability. The two countries are wholly dissimilar in institutions, people and general characteristics. England is a small country, and the problem of policing it is a very simple matter. But the English police are no more success-

ful in handling the foreign criminals who flock into London than their American brethren over the seas. In fact, to my way of thinking, the American police show a decided superiority in handling the foreign criminal; they succeed in convicting them oftener than the English police do on similar occasions. Of course, when the observations are made we realize that the subject matter of discussion are over three thousand miles apart; on this account all comparisons and deductions made as to the superiority of one system over the other must necessarily be full of imperfections and errors. America is the "melting pot" of the nations; every year along with good immigrants we receive a flood of lunacy, disease and crime which is dumped upon our shores. The massive problem of dealing with this mass, and making them observe the laws of this country is a question which does not occur to the half-educated and ill-informed social worker. The average immigrant who comes from monarchies has felt the burden of oppressive laws and when he begins to understand "English" thinks he has a mission to reform America; he never thinks that he should start with himself. The laws under which he has lived in Europe are radically different from those of our own country, but in his illiteracy and conceit he confounds them, with the result that we have a poor type of citizen with anarchistic tendencies. It is this type which fills our halls and lectures on the ills of humanity; they have a salve for all human troubles and moral disorders of mankind. Instead of preaching sermons to these types in prisons a lecture on civil government would be of more lasting value; the foreign criminal is on the increase and will continue to be until we have better immigration laws. The immigrant who comes merely to "exploit" the country, and in his selfish avarice obtains all its advantages and assumes none of its responsibilities and burdens should be denied entry at our hands. When you compare police systems the student should bear in mind that the American police, in addition to taking care of our own malefactors, have also to keep in check all the notorious characters of criminal immigrants.

JOSEPH MATTHEW SULLIVAN, Boston.

Course for Police in Paris.—To secure better technical equipment for the members of the criminal brigade in the police service, the prefect of police in Paris has established a regular training course for police under general direction of M. Bertillon. It includes such subjects as the concrete duties of the various departments of the police service, elements of practical penal law, methods of judicial investigation, types of evidence, weapons and tools used by criminals, methods of arrest, methods of executing judicial orders, special types of criminals operating in large cities, methods and rights of defense, preparation of reports. *(Rivista Penale,* Apr., 1914.)

A. J. T.

MISCELLANEOUS.

Annual Meeting of the Illinois Branch.—The third annual meeting of the Illinois Branch of the American Institute of Criminal Law and Criminology was held May 26 and 27 at the Hotel LaSalle, Chicago. Following the arrangement made the year before, the sessions of the Illinois Branch were held in connection with the annual meeting of the State Bar Association. By the courtesy of the State Bar Association programs of the two meetings were sent out in the same envelope to all members of the Bar Association, and

space was allowed in the annual report of the Bar Association for a brief resume of the proceedings of the Illinois Branch. In point of attendance and interest the third annual meeting was the most successful meeting so far held. However, it is still a matter of regret that more members of the bar do not take an active interest in the work of the State Society.

All the papers read at the third annual meeting will be published either in the JOURNAL or in bulletin form. Hence only the topics discussed and the names of those taking part in the discussion will be set forth here. The first session was held at 3 p. m. in the College Room of the Hotel LaSalle on Tuesday the 26th. Judge William N. Gemmill of the Chicago Municipal Court, read the President's annual address. His subject was, "The Criminal, Who Is He, and What Shall We Do With Him?" The President's paper was discussed by Nathan William MacChesney, John H. Wigmore, John F. Voigt, Edwin R. Keedy, F. Emory Lyon, Charles Richmond Henderson and C. G. Vernier.

A committee of three consisting of John H. Wigmore, chairman, Nathan William MacChesney and Oliver A. Harker, was appointed to nominate officers for the ensuing year. After considering various resolutions the society adjourned to 7 p. m. for an informal dinner in the East Room.

Edmund M. Allen, warden of the Illinois State Penitentiary, who had prepared the first paper for the second session was unable to be present. His paper, entitled, "The Execution of the Penalty," was read by Dr. Charles R. Henderson. Warden Allen's paper was discussed by Charles R. Henderson, Albert C. Barnes and Edwin R. Keedy.

The second address of this session was delivered by Professor Harry A. Bigelow, of the University of Chicago Law School, and was entitled, "A Brief Review of the Criminal Cases in the Supreme Court for the Past Year." Professor Bigelow's paper was discussed by O. A. Harker and C. G. Vernier. Major James Miles, Examiner in Charge of the Efficiency Division of the City of Chicago Civil Service Commission, read the first paper of the third session. His subject was, "Police Reorganization." Discussion followed, by Frederic B. Crossley, Horace Secrist and Charles R. Henderson. The last number on the program was a paper by Dr. Paul E. Bowers, Physician in Charge of the Indiana State Prison, Michigan City, Indiana. His subject was, "The Recidivist." Dr. Bowers' paper was the cause of a very lively discussion in which John L. Whitman, Dr. Charles E. Sceleth, Dr. S. L. Cabby, William N. Gemmill, Edwin R. Keedy, Chas. C. Love, John H. Wigmore and William G. Hale, joined.

The following resolutions approved by the Executive Council were adopted by the society.

1. We recommend the preparation of a bill for a law creating state colonies for misdemeanants convicted under state laws, with the provision that cities and villages may send their convicted misdemeanants to such colonies for discipline upon payment of the proper ratio of cost of maintenance.

2. We recommend the consideration of a joint commission of the County of Cook and the City of Chicago for the maintenance of a Bureau of Welfare, one of whose duties would be to establish and maintain agencies for the prevention of vagrancy as well as for the conviction of habitual misdemeanants by training shops, gardening, farming and other suitable occupations.

3. We recommend the consideration of a bill for a law placing power to make regulations for the structure and management of county jails and city lock-ups in the hands of a State Board of Administration, with provisions for

necessary inspection and enforcement of the regulations. Resolutions number one and three were referred to the Legislative Committee, Nathan William MacChesney, chairman.

Officers for the ensuing year were elected as follows:

PRESIDENT—George T. Page, former vice-president State Bar Association, Peoria.

VICE-PRESIDENTS—Charles R. Henderson, International Prison Commissioner for the U. S., University of Chicago, Chicago; Robert H. Gault, Editor Journal of Criminal Law and Criminology, Northwestern University, Evanston.

SECRETARY—Chester G. Vernier, Professor of Law, University of Illinois, Urbana.

TREASURER—William G. Hale, Professor of Law, University of Illinois, Urbana.

EXECUTIVE COUNCIL—Chairman, O. A. Harker, Dean of the College of Law, University of Illinois, Urbana; William N. Gemmill, Judge of the Municipal Court, Chicago; Major James Miles, Examiner in Charge, Efficiency Division, City of Chicago Civil Service Commission, Chicago; Edmund M. Allen, Warden Illinois State Penitentiary, Joliet; Harold N. Moyer, M. D., Chicago.

CHESTER G. VERNIER,
Secretary, Illinois Branch.

International Criminology.—The author denies point blank that we have had or can have now any such thing as an international criminology. For, says he, we have no such thing as international law. Domestic law is a creation of man in society, not the outgrowth of impersonal evolution nor natural rights. Just as crime or a criminal does not exist in nature but is the creation of law, so we can have no international crimes, hence no international criminology until we have a real system of international law. "You cannot talk of delinquency or of breaking a bond when no bond exists; no more can you conceive of violating a law which has no life." But how about war? Is not war a "natural crime," so to speak, between nations? While it may be, indeed must be in time, it is not yet a crime. We are still, from the international standpoint, living in a state of what somebody has called "civilized anarchy." Our international policies proceed from the crudest motives of naive egoism. To be sure, certain writers, like the South American, Alvarez, talk of codifications of international law; but those codifications at this stage would simply crystallize the imperialistic policy of the great European States at the expense of the minor powers. Again, anarchy and the rule of force. The attitude of modern States toward each other lends color to the suspicion that the organicist theory of the state has somehow or other married Lombroso's theory of the born criminal, and that the offspring of this nightmare match are the degenerate, irresponsible personalities we call nations or States. According to Sig. Cimbali, we must in some way do for our international relations what the Declaration of the Rights of Man has done for nineteenth century internal relations. He concludes that the one way to begin a real international criminology is to make of every nation a juridic person; more than that, in the phrase of David Jayne Hill (whom by the way he quotes as David Hyne-Hill!) every nation must be conceived as a person judicable in both civil and criminal law. As to the concrete methods of attaining even this beginning he gives no suggestion. *(Giuseppi Cimbali, Rivista Penale,* Aug., 1913.)

A. J. T.