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## PROBATION AND SUSPENDED SENTENCE

(Report of Committee "B" of the Institute).

HERBERT C. PARSONS, *Chairman*.<sup>1</sup>

It is the purpose of this report to present the main results of a survey of the statutes of all the states of our country as to their provisions for probation of offenders and suspended sentence, to extract from them their salient features, as well as their limitations, and to offer suggestions as to the ways in which, in the light of accumulating experience, they may wisely be broadened and perfected. The theory of probation as a process of reformation has been so fully and ably presented in prior reports and in public discussion that it may be regarded, not only as familiar, but as approved in the minds of those officially or professionally concerned in the administration of the criminal law, and to a degree—although it must be admitted still incompletely—in the mind of the general public. Such reference as will be made to the history of the development is resorted to solely for the purpose of showing the readiness with which the theory has been accepted, and to depict the institution as a living and luminous fact in our present advanced jurisprudence.

There has come to be written across the face of the criminal laws of practically every state in the Union the expression of a determination that the violator of the code shall be given an opportunity for rehabilitation. That design finds its outlet in the word "probation." That the word itself is graphic and precise may be concluded from the

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<sup>1</sup>The membership of this committee is as follows:

Herbert C. Parsons, Chairman, Secretary Massachusetts Commission on Probation, Boston.

Arthur W. Towne, Society for Prevention of Cruelty to Children, Brooklyn.

Wilfred Bolster, Municipal Court, Boston.

Charles A. DeCourcy, Supreme Judicial Court, Boston.

Homer Folks, Yonkers, N. Y.

Edwin Mulready, State Commissioner of Labor, Boston.

Robert J. Wilkin, Juvenile Court, Milwaukee.

John W. Houston, Chief Probation Officer, Chicago.

James A. Webb, Superior Court, New Haven.

E. Z. Hackney, Probation Officer, Court of Quarter Sessions, Philadelphia.

A. C. Backus, Municipal Court, Milwaukee.

This report was presented at the Eighth Annual Meeting of the Institute at Saratoga, N. Y., September 3, 1917.

fact that in no statute yet written has it been found necessary to make a definition. It was seized from the language, not so much of common use, as of that made somewhat familiar in the field of theology. In those precincts it is not modern. In the burial ground of the Pilgrims at Plymouth a tombstone bears this inscription:

In memory of Frederick, son of Mr. Thomas Jackson and Mrs. Lucy, his wife, who died March 15, 1778, aged 1 year and 5 days.

O! happy Probationer! accepted without being exercised, it was thy Peculiar privilege not to feel the slightest of those Evils, which oppress thy surviving kindred.

In passing, it may be noted that this demise occurred precisely a century before the first probation law came to relieve "surviving kindred" of certain of "those Evils" which "oppressed" intervening generations.

A devout people, at least a people made familiar with the controversies of ecclesiastics, had sufficient grasp upon the meaning of the word probation to appreciate fully its meaning when, in the now historic act of the Massachusetts legislature of 1878, it found its way into the criminal law. For its purpose there we may turn to the interpretation by the courts, perhaps nowhere more definite than in the phrase in *Marks v. Wentworth*, 199 Mass. 44: "Probation looks to reformation and not to a final goal of punishment." That its purpose is correctional, and that it belongs within the field of criminal procedure, is indicated by the language found in another Massachusetts decision, regarded in that Commonwealth as the leading case, *Commonwealth v. McGovern*, 183 Mass. 238: "The placing of persons convicted of crime in the custody and care of a probation officer is a part of our penal system."

It was reserved to the century into which we have advanced but a few years to make this word a common and distinct feature of the criminal law. Originally used in Massachusetts for its capital city alone, and extended by the act of 1881 to the option of any municipality, and by the act of 1891 turned from a municipal to a judicial control, the present century opened with but four states using it as to adult offenders. Meanwhile it had gained recognition as to juveniles by the pioneer juvenile court act of Illinois in 1899 and by that of one other state, Minnesota. With only these six states recognizing the word and what it implied, the advance from 1900 during the immediately following years broadened to the continent. It is actually missing recognition in but a single state of our nation today.

It is important to note that the hope of reformation in offenders,

as expressed in the law, is of much more ancient origin. As to juveniles it at least dates back to the first reformatory, established in 1848, which was an industrial school for boys, followed by the similar institution for girls, the reformatory for women, and then for men. But this earlier movement was based on the belief that reform was an institutional undertaking. Probation came as a protest against that notion and as an assertion that the moment to undertake the restoration to right conduct by an upbuilding process is the precise instant when the offender comes within the cognizance and control of the court. It is that vital feature which signalizes this development, and now demands a consideration of how far it has justified itself, and how much of light there is in the hope for its much more complete recognition in our country.

#### STATUTORY LIMITATIONS OF PROBATION

Caution has marked the adoption of probation. Let us examine the limitations that run through the American statutes. The first of these is as to age. Juvenile probation has been, in the majority of states, the first recognition, and it remains the only one in apparently eighteen of them. The theory of human salvage is denied its full expression in these states, except as to those persons who are presumably in a plastic, because a youthful, period. It is no longer necessary to plead for juvenile probation. The field for inquiry and examination of results is that of adult probation. Certain limitations of juvenile probation, plentifully found in our laws, are indeed open to discussion, such as its confinement to populous sections and to first offences; the dependence upon unpaid officers; the acceptance of the police as a substitute for distinctly reform officers; the continued linking of supervision to the prison systems; and other restraints of a minor but by no means negligible kind. The misfortune of these restrictions and denials will, however, be sufficiently apparent in connection with our study of the features of adult probation laws.

The statutes now available in published form, bringing the revision up to include acts of the year 1916 and in some instances those of 1917, seem to show twenty-four states in which there is provision of some sort in the general statutes for adult probation. To these must be added five states in which it appears to have been provided for cities or districts by special acts. Thus we have a total of twenty-nine adult probation states. These may be classified as to the requirement or availability of probation as follows:

State in which a salaried probation officer is present in every court	1
States in which the entire territory is provided with probation service by statute, but not necessarily in every court or not in all cases with a paid officer.....	4
States in which a probation officer may be had when a local governmental board requests or provides for.....	4
States in which a probation officer may be appointed in any court when the court so chooses.....	7
States in which probation officers are required in civil districts with a prescribed population.....	5
State in which probation is provided for a special class of cases, for instance, desertion and non-support, but no probation officers required .....	1
States in which supervision of probation cases under suspension of sentence is placed in prison authorities.....	2
States in which provision has been made for cities or districts by special acts and not by general statutes.....	5
Total .....	29

A certain highly qualified recognition of the principle may be noted in two other states—in one of which release by the court on suspended sentence is permitted, without the use of the words “on probation,” and without any prescribed supervision; and one in which sentence may be suspended by the governor “in the exercise of executive clemency” with no provision for supervision.

#### METHODS OF APPOINTMENT

Satisfaction may be taken in the conspicuous fact that the probation officers are as a rule appointed by the courts. When it is taken into account that the first state law provided for municipal probation officers, it is a supreme fortune that it was returned to the judiciary where it obviously belongs, and that the exceptions are few where appointments are made from the political field. In one of these the appointment is unqualifiedly in the governor. In another it is in the governor on recommendation from the court. In another it is by the state board of charities, which names a state probation officer and controls the provision for deputies for certain courts. In another, appointments are by the state commission on charity and probation. These four comprise the list of those where appointment is withheld from the court.

There is, however, a more general subjection of this feature of judicial administration to political restraint in the rather widespread

restriction of salaries to approval by civil officers. Of the states provided by general law with probation officers for adults, in only four do the courts appear to have entire control of probation salaries. In five others their control is within salaries named in the statutes. In three instances the statute definitely fixes the salary. The larger group is made up of those states where the salaries are established by municipal or county governments, five in number, and those in which the salaries named by the court are subject to approval by the civil authorities, six in number, with an additional one where they are fixed by a state board, a total of twelve. It might be expected that the control of salary by a politically chosen board would operate to a control of the system itself, to a measure as to its personnel and to a larger degree as to its extension and support. That expectation is fully borne out by the experience of the states in which this method prevails. Precisely the same wisdom which divorces the judiciary from politics as far as possible in the selection of judges, and which has kept the probation appointment within the control of the court, should free the service from any financial restraints which may be extended to control of the service itself. If the example of those states which fully trust the courts to fix prudent salaries cannot safely be followed, at least the case is clear for such statute provision as to salaries as will remove the question from local or political control.

#### TERRITORIAL LIMITATIONS

Another limitation characteristic of probation legislation in a very general way is that which limits it to populous sections. Running through the statutes are provisions such as that counties of a certain population may or shall have probation officers, and that the larger counties may have paid probation officers while the smaller ones must depend upon an unpaid service. The practical effect of these lines in the statutes is that probation is granted for urban but not for rural districts. In some instances, the required population is so high that it positively, and perhaps by intent, is limited to metropolitan bounds. If the merit of probation be admitted and if it is warrantable to undertake the saving of the offender by this method, it is obviously imprudent, unfair and unjust, to exclude him from its aid whose offence happens to be committed in a region of comparatively sparse population.

#### RESTRICTION ACCORDING TO OFFENSE

The limitation which most frequently gets under heated discussion is that as to the offence. So far as the statutes indicate, by far the larger number of states present no limitations as to the nature of

the offence in the use of probation, but at least six states, including some of those with the largest populations, confine its use to first offences, with such requirements as that there shall be no previous criminal record, or that there shall not have been previous imprisonment for crime. One state denies it to persons who have previously been convicted of a felony and further to one who is now convicted of a felony punishable by imprisonment for more than ten years. Certain of the states not only require that it shall be the first conviction but that it shall not be for certain crimes of an extreme nature. The group of states which mention in their statutes certain offences, conviction of which works a denial of probation, include such crimes as: murder, burglary in the first degree, or burglary of an inhabited house, arson, robbery, rape, carnal knowledge of a female child under ten years of age, assault with intent to rape, while in others murder and treason are the only barred offences. Michigan furnishes an exemplary instance of progress from such limitation. Under its act of 1903, as amended by acts of 1905 (Act 32), a convict could only be put on probation who had "never before been convicted of a felony other than simple larceny." Its revision of 1913 broadened the qualification for probation to the familiar language: "where it appears to the satisfaction of the court that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant shall suffer the penalty imposed by law"; and in this revision only made exception of murder and treason.

Thus we have the approval of the preponderance of states of the theory that with probation in view, the court properly goes beyond the consideration of the offence to consider the possibilities of the offender as a member of the community. So their statutes read and so their practice proceeds.

In any argument for unrestricted probation, within the discretion of the court, it is, of course, to be assumed that the courts in the use of this instrument proceed discreetly and with all the deference that is due to public sentiment as it may exist in their jurisdiction. The experience of the states where probation has been given its longest and most thorough trial goes to lessen the distinction between first and second offences; between misdemeanors and felonies; between minor and aggravated crimes. Cases could be cited from recent records of the placing on probation of persons convicted of even capital crimes. The testimony of probation officers could be brought to substantiate beyond question the fact that the largest percentage of rescue

and return to law-abiding life is supplied by those probationers whose offences were of the kind ordinarily visited with the severer penalties.

#### PROBATION FOR FIRST OFFENDERS ONLY

The case against the limitation of probation to first offences is strong, if not indeed conclusive. Both logic and experience go to demolish the notion that the possibility or fair prospect of reform is limited to those making their first appearance in court. The records of experienced probation officers are replete with instances where repeated and mistaken treatment of an offender in the form of penalties including imprisonment, has come to a real correction by the use of probation. Logically it is as little justified in correction as in medicine to say that the best and most helpful treatment must not be applied if a person has before been under some other form of attempted remedy which has failed to bring recovery. The most casual observer of cases in criminal courts knows that the event of appearance in court may be, in one instance, the first symptom of a criminal tendency, and, in another, the fruition of a long sequence of wrong deeds which happen to have escaped detection or arrest. We have noted that this limitation appears in the probation laws for adults in several states, and if we turn to the juvenile laws the extent of what seems a glaring error would be found much greater.

#### METHODS OF APPOINTMENT

Another questionable conception of the place and purpose of probation in our correctional system appears in the provisions as to the selection of probation officers. Repeatedly in the statutes will be found the arrangement that the probation duty shall be performed by police officers. In certain states the sheriff of the county is given the probation task. In others the police may be called to this duty. We even find the service rigidly held within police lines by the positive requirement that police officers shall be designated as probation officers, no others being eligible. Against these provisions of law it is gratifying to place in contrast the exclusion by statute, in the states where as a rule probation has reached its best development, of any combination of the offices of probation and police. The typical phrase in the acts of these states is, "Probation officers shall not be active members of the regular police force, but so far as necessary in the performance of their official duties shall have all the powers of police officers."<sup>2</sup> Cooperation between the police and probation forces is, of course, desirable if not essential to the success of the task of either. Some statutes definitely require it but these are found in states where official separation is made positive. The police attitude is not the probation attitude,



and it must be regarded as a survival of the historic idea that the courts exist only to punish that the services of the police are requisitioned for this new and wholly reconstructive business.

Three states, at least, have provided that appointments of probation officers shall be after competitive examination in order to arrive at fitness. The State Probation Commission of New York in its reports gives unqualified approval to the use of the merit system in the selection of officers. In other quarters the question is raised whether a position calling for qualities of heart quite as much as of head can be as well filled through any test as by entire freedom of selection by the judge with whom the officer is to be on terms of confidence and personal responsibility. In this view, the acquirement of any tenure of office other than the pleasure of the court would mar the effectiveness of the service. There is to be urged, however, the necessity of securing efficiency for an exacting duty and there can be no reasonable denial of the value of special training.

#### USES OF PROBATION OFFICER.

We come now to the uses that are to be made of the probation officer. The variance that is marked in the statutes is very great in the matter of preliminary investigations. Several states display the theory that the probation officer should be subject to the call of the court for inquiry into such cases as seem to the court to need special investigation. The contrast to this idea is found in the requirement, none too common in the law, that "each probation officer shall inquire into the nature of every criminal case brought before the court under the appointment of which he acts."<sup>3</sup> The value of prior investigation into the social facts as to the offender cannot be questioned. It is the cornerstone of probation. Can it be thought that the time of the appearance in the court room is the most favorable one for determining whether these facts should be ascertained as to the person whose case is under consideration? Is the judge, in the midst of his occupation with the often rapid disposal of cases, in the best position to select those for the probation officer's inquiry? It is both conceivable and, on the testimony of experienced officers, actual, that it is often the case which offers no particular evidence of a need for social investigation which, in fact, most emphatically needs it. Hence the conclusion that nothing short of inquiry into all cases fulfills the ideal of probation, and that the service will not approach its possible practical value where inquiry is restricted to cases under any process of selection.

<sup>2</sup>Mass. R. L., Chap. 217, Sec. 83.

<sup>3</sup>Mass. R. L., Chap. 217, Sec. 84.

Rather rare in the laws is the provision that the probation officer may recommend to the court whether or not a convicted person shall be put on probation. Doubtless the use of that function is much more general than the laws reflect. Certainly we are not reaching the culmination of the plan when the probation officer is any less than a free advisor of the court as to the disposition of cases. He cannot in any degree be a party to the determination of guilt, but from the moment that this is ascertained he needs to come into the closest contact with the court, not only fully displaying the facts he has gathered, but with a freedom of counsel limited only by the respect due the magistrate, upon whom the final responsibility rests.

#### RESTRAINTS UPON THE OPERATION OF PROBATION.

The caution with which the states have established probation, the limitations and restraints the statutes have thrown around it, offer no cause for amazement. It is a distinct, perhaps we should say, a fundamental variation from the theory of the state's duty toward the offender. It runs counter to the great weight of judicial opinion and interpretation. The well settled theory was that the duty of the court after the determination of guilt was to impose sentence summarily within the limits of discretion allowed by the code. The right to suspend sentence or the execution of it has been denied in decisions almost without number. There are indications of the changing state of the public mind in the reversals by courts, of opinions which have been firmly held through the course of years. New York furnishes an example of such a reversal in 1894 of the decision of only the year before, which in turn was consistent with all that had been determined in prior opinion. But so late as 1912 the supreme court of an eastern state was able to say:

"It is a well recognized principle that after a sentence has been imposed the court has no authority to relieve the convict from its execution. The authorities draw a clear distinction between the suspension of the imposition of a sentence and the indefinite suspension or remission of its enforcement. There is a conflict of authority as to the power of the court after the conviction to indefinitely postpone the imposition of the punishment therefor prescribed by law, but however the courts may differ as to such power, it is well established that the court cannot, after the judgment in a criminal case is rendered and the sentence pronounced, indefinitely postpone the execution of that sentence, or commute the punishment and release the prisoner therefrom in whole or in part. \* \* \* The act which the authorities hold that the court has not the power to do, is \* \* \* the act done

for the purpose of exonerating the convict in whole or in part from the final and lawful judgment and sentence of the law which has been imposed upon him. That is the power of pardon, to commute penalties, to relieve from the sentence of the law, imposed as punishment for offences against the state, which power has not been given to the courts but confided exclusively to the Governor of the State, with the advice and consent of the Council."<sup>4</sup>

While probation is by no means always an adjunct to suspension of the execution of a sentence; it does intrude upon the disposition of the case at a point where, upon the theory of the opinion just cited, there may be no delay in the process of dealing with the convict according to the code. It does take the offender from the well-worn path to an institution, and undertake a treatment for his betterment utterly different from that of the past and of precedent. A process so at variance with long accepted procedure could hardly be expected to find its place in statute law without qualifications and restrictions. That it has not been easy to free it from the color of clemency and concession is indicated in some of the statutes already cited, such, for example, as that which permits suspension only by the act of the governor of the state. It is reflected only less strongly in the laws which hold the probationer under the control of prison authorities. We get something of its shadow in the linking of the probation and the police functions. It emerges completely into full light only in those laws which place unrestrained discretion in the courts and equip them with an officer, or officers, charged with the duty of full investigation of the personal and intimate facts, the free conference with the court on the social and individual merits of the case and the thoroughgoing supervision of the convicted person in the spirit of helpfulness.

In the very recent case, *ex parte United States*, 242 U. S. 27, the suspension of sentence or of its enforcement in the absence of statute provision was held to be unconstitutional. But in this decision it is said:

"So far as the future is concerned, that is, the causing of the imposition of penalties as fixed to be subject, by probation legislation or such other means as the legislative mind may devise, to such judicial discretion as may be adequate to enable courts to meet by the exercise of an enlarged but wise discretion the infinite variations which may be presented to them for judgment, recourse must be had to Congress, whose legislative power on the subject is in the very nature of things adequately complete."

<sup>4</sup>*State of Maine v. Sturgis*, 110 Maine 96.

Perfectly natural apprehension as to the possible harm to society and even to the individual from what is rather loosely called lenient treatment have had to be met out of actual experience. An instance of consideration for the person may be cited to show how what appears to be a substantial objection proves to be fragile. There was a fear that the visit of the probation officer to the home of the person under his charge would be such advertisement of his criminal standing among his neighbors as to be disturbing, degrading and destructive. When the Departmental Committee of the British government in 1909 made an elaborate investigation of the operation of the Probation of Offenders Act of 1907, this objection was seriously urged upon them. It was one of the lingering apprehensions which formed a considerable group, and which would doubtless be reflected in the minds of many cautious American citizens. The Committee found no support for it, or for any of its kind, and in the report stated that "the act has already (after two years trial) proved to be of great value", and that it has shown when actively used that it could become a most useful factor in the penal law. American states which have most fully tested the law conclusively justify this foreign opinion.

#### EXPERIENCE JUSTIFIES PROBATION.

Increasingly with every year probation is justified as an essential of enlightened criminology out of the experience of those states which have most widely employed it. The facts they contribute must be the foundation for the plea for its extension into new territory and its emancipation from restrictions and limitations. Its operation is constantly under public observation. The persons under its charge are mingled freely with the law-abiding and always critical people. Is it conceivable that a state which had fully adopted the practice of dealing with convicted persons by outdoor reformation would continue in its use if it were accompanied by any breaking down of the safeguards of life and property?

In Massachusetts, which may be cited because of its longest experience, the number of cases placed on probation has grown from 13,967 in 1909 to 28,953 in 1916.<sup>5</sup> Meanwhile, the number of commitments to institutions has declined proportionately. Probation became universal in its courts in 1898, and in the period that has elapsed, while the population of the state has increased by nearly a million, no additions have been built to its penal institutions, either state or county, and practically half their cells are vacant today. The great causative factor in such a result is conceded to be the use of probation. Other

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<sup>5</sup>Massachusetts Commission on Probation, eighth annual report.

evidence of its increasing use and beneficent effect is shown in the collections by probation officers in the form of restitution, suspended fines in lieu of imprisonment, and non-support payments. The total for these in 1909 was \$49,067. In eight years it has grown to a total of \$418,315. The amount of the collections is nearly double the cost of the maintenance of the service. These figures argue a very substantial economy, measured by dollars, and only suggest that wiser and more valuable economy which may be described as human salvage.

The other measure for the appraisal of this method is the comparative personal results of probation and imprisonment. In 1916, in Massachusetts, 61.7 per cent of the prisoners sentenced to all prisons were found to be recidivists. Their number was 14,179 and they had served a total of 93,182 sentences, an average of over six and a half former commitments each.<sup>6</sup> In hopeful contrast to this failure of institutional correction are the results of probation, which are shown, year by year, to yield upwards of 70 per cent of those placed on probation completing their term satisfactorily. In the longer view of the subsequent life of probationers we have the testimony of James P. Ramsay, a Massachusetts superior court probation officer, who in his recently published book, "One More Chance", states that out of 3,000 persons under his personal charge within a period of fourteen years, 55 per cent have shown by their subsequent life that they were permanently saved and have remained good citizens, while an additional 10 per cent have earned a fair rating. Dr. Bernard Glueck, psychiatrist at Sing Sing, commenting upon these figures, says, "One doubts very much whether there is a penal or reformatory institution in existence which could present a record such as this."

The judge of a municipal court of a western city is quoted as saying, "Carefully compiled statistics show that under the old system when first offenders were sent to the penitentiary or reformatory institutions, in a period of five years after serving their sentence, from 27 to 41 per cent were returned to court on their second offence, showing that the penal institutions have not been the best corrective methods so far as the individual is concerned. The probation system has almost reduced this to a minimum, during a period of five years the return to the court being little over 3 per cent."

The ninth annual report of the State Probation Commission of New York shows as results of probation that, in children's cases, 82.6 per cent were "discharged improved" and, in adult cases, the percentage was 76.4.

<sup>6</sup>Massachusetts Bureau of Prisons, First Annual Report.

The mass of testimony, from which the foregoing are but examples, establishes the stoutest claim herein made that probation justifies itself not only as a humane institution but as effective to the highest degree as a correctional and protective policy.

#### FEATURES OF A STANDARD PROBATION LAW

The advance of probation as shown in American statutes has been constant and sustained. But two reverses appear. One western state, in 1915, repealed its provision for juvenile probation officers, although leaving the other features of the juvenile law unchanged. A southern state, in 1910, suspended its general juvenile probation law, enacted two years before, except as to towns of a certain population, although providing for its employment in any county upon petition by a police jury to the governor. There has been no complete abandonment of ground once occupied. What may be expected is, the removal of hampering limitations which restrict the helpful process, either territorially or to classes of offenders.

It may be too early to urge an effort for a uniform probation law. But it is not too soon to say that the experience of the past twenty years has richly justified the broadest provisions and that the states where caution has checked a full acceptance of the plan will find an appeal to their humane statecraft in the example of their sister states, where legal conservatism has yielded to legal progress. If we may indicate the line of safe advance, we urge the bringing of statutes to conform to the following provisions:

(1) That probation should be made universal within the states, to the end that offenders even in sparsely settled communities should be treated helpfully and restored to right relations to society by practically the same methods as are employed in cities and large towns.

(2) That probation shall be made available for offenders of all classes, abolishing the distinction between crimes as to seriousness and doing away with the theory that the first offender is alone worthy of consideration for this method of salvage.

(3) That probation officers with pay be provided for every court. Good service is not to be expected in this field without compensation which, while it need not be extravagant, should be sufficient to make certain that the court has positive command of all the needed time of its officer. We join in the opinion of the British Departmental Committee, already cited, when it says, "The appointment of honorary," or, as we should say, volunteer, "probation officers may also be most valuable, but such appointment should be regarded as a supplement to, and not a substitute for, the employment of regular (paid) probation officers."

(4) That the control of the probation service be entirely within the court. To this end the appointment of officers by the judges should be final or subject to confirmation within the judicial system. The control of salaries should not be subject to the approval of political officials, the protection against excesses, if any is needed, to be in statute limitation of salary or a limitation of budget.

(5) That provision should be made for physical and mental examination of offenders for the determination of the treatment needed and the proper disposition of their cases by the court. A justifiable limitation of probation is to those persons physically and mentally capable of responding to its restorative efforts. Probation is too delicate an instrument to have its edge dulled by application to unresponsive material.

(6) That women be made eligible for appointment and that the supervision of women and girl probationers be as far as is practicable, uniformly given to officers of their own sex, in imitation of the one state in the union which now provides by law that no person shall be under probationary supervision by an officer of the opposite sex.

(7) That there should be supervision and co-ordination of the work by a state commission. But two states now have commissions on probation entirely distinct from other services. New York was the first to provide one, 1907, and Massachusetts followed in 1908. Vermont has recently merged a separate commission with its state board of charity. Certain other states have supervision as one of the duties of a state board while others have local advisory committees. The field of probation is so distinct and its problem so far unique that a separate administration in the name of the state seems essential.

Probation as a structure of the law rests upon a foundation of more than a single stone. It is the refinement of humanity as to the wrongdoer. It is the assertion that society is safer with its erring members set right, than with them subjected to institutional punishment, and that its general welfare gains by the same measure. Equally essential to its support is the declaration that rehabilitation should be undertaken at the earliest possible moment in the life of the apprehended person, and that it is more prudent, indeed the only economy, to give him study and apply to him restorative methods before he is sullied and the case made more difficult by commitment to an institution.

#### MINORITY REPORT

ARTHUR W. TOWNE

I endorse practically everything said in Mr. Parsons' valuable report for this committee. I wish, however, to be recorded as ques-

tioning just one thing, namely: The wisdom of leaving the appointment and the determination of the compensation of probation officers, and also the administration of probation, too largely in the hands of the judiciary. These matters must be regulated in different parts of the country more or less according to local conditions, but my thought on the subject has led me to favor interpreting probation as not so much a judicial as an administrative function. I believe that we should encourage experimentation to see how probation will work when administered by local executive boards.