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Notes and Abstracts

NOTES AND ABSTRACTS

On Medical Expert Testimony.—Permit me to offer a few suggestions in reference to your editorial "On Medical Expert Testimony," which appeared in your last issue of the Journal. In the first place, I desire to express my entire agreement with you as to the evils attendant upon the practice of each party in an action at law selecting his own experts; but I also desire to state that "professional" experts appointed by the court would quite likely result in bringing such appointments under the influence of party politics, which, in my opinion, would have far more injurious effects than the present practice can be charged with.

The evils of expert testimony are rooted in (a) the hypothetical question, and (b) the ease with which medical practitioners are secured to testify on either side of a case. The hypothetical question is a comparatively modern development in the practice of law and its growth among other things is due to the readiness with which medical men are willing to express an opinion for or against any proposition, and also to the fact that to the lay mind all doctors are alike. The ordinary individual looks no further than the "Dr." or the "M. D." There are no degrees of ability and attainments to him and the lawyer takes advantage of this fact to cloud the issue. The lawyer has no use for the physician who insists upon investigating the facts for himself, wherever possible, and drawing his own conclusion from the facts as he finds them. If you will pardon the suggestion, but it seems to me that in your reference to psychiatrists you fall to the same error as the laymen. There is a large and increasing number of physicians of the school of psychiatry who refuse to testify on any matter which they cannot or are not permitted to investigate for themselves, and I venture to say that if there are psychiatrists who offer their services to the lawyer as experts and are willing to be "cabined, cribbed and confined" by the hypothetical question, such practitioners do not rank very high in this distinctly specialized branch of medicine.

Your suggestion that "physicians . . . have to take things as they find them," with respect to expert testimony, seems to me to be stating the proposition too broadly. Where the hypothetical question is involved physicians "take things" as the lawyers want to "find them." The medical expert would be in neither "a false" nor a "disagreeable position" if he insisted, wherever possible, on making investigations for himself and refusing to testify unless permitted to do that. Taking the results of the more or less partial investigations of others and giving an opinion thereon necessarily means a difference of opinion which gives full opportunity for partisanship. In one or two classes of cases, perhaps, this is inevitable and they are the very cases in which the hypothetical question gets in its most deadly work to the growing discredit of the medical profession.

A somewhat closer study of this question has led me to lean to the view that the profession, for its own sake, will either have to abolish the practice of giving expert testimony altogether or enter upon a propaganda of education with a view to the enlightenment of the laymen to the fact that doctors are very far from being equal in their attainments and ability and that prefixes and suffixes to names are of very little meaning, in the hope and expectation that perhaps a better and more reliable class of medical experts may be

evolved who "shall be men who have the honor and good repute of their profession at heart" and "who are concerned solely with helping courts and juries to arrive at the truth" and not with helping lawyers to win cases, under the forms of law, irrespective of the real merits of the cases.—Frederick J. Farnell, M. D. From *Rhode Island Medical Journal,* September, 1922.

On Medical Expert Testimony.—In a previous letter (September 1, 1922) I offered several suggestions as to the possibility of bringing about a change in attitude towards medical experts as manifested by judges, juries and laymen. Historically, this attitude is not a new one. The Roman law took no cognizance of the physician as an expert. And even when Greek physicians became active in Rome, as an organized body, little or no attention was given to medical experts as far as their standing in courts of law was concerned. The medical expert is largely a product of the English common law influenced greatly by the increasing complexity of modern society. The legal profession is predominantly conservative and this conservatism is reflected in the courts. Discoveries in medicine are always considerably ahead of their application to the ordinary intelligence as shown by the average jury, consequently the legal profession is wary of the new things in medicine. It seems to me that this wariness is carried beyond reasonable limits when it refuses the assistance of the psychiatrical branch of medicine in disentangling the judicial snarls so frequent in the courts. Why is this psychiatry so inadequately appreciated by the judges and lawyers? This, I believe, can be answered by emphasizing the two factors, (1) that this disregard for expert opinions is partly due to the fact that they are at variance to each other and tend to obscure rather than enlighten the jury, due undoubtedly to (2) introduction into medical testimony of the hypothetical question. Is there any possible way whereby an expert psychiatric opinion may be of value to the judge and jury?

In an address delivered by a leading jurist it was stated that "The process of eliciting from medical experts answers to hypothetical questions concerning mental capacity, has come to be a highly artificial and a wholly unconvincing performance. Both juries and the courts largely ignore such evidence, seeking as a basis for their deductions evidence showing objectively capacity of a testator to attend intelligently to his current affairs. The refinements of the medical science applied as they are to facts postulated in an interminable question prepared by counsel interest them chiefly as intellectual gymnastics. They usually dismiss the learned medical disquisitions with ill-concealed amusement. . . . And so this kind of evidence has become an excrescence upon our court procedure. The situation ought to be of serious moment to the medical profession, which may well consider whether its dignity and usefulness is not being impaired by the slight respect paid to views asserted to be based on established principles of medical science. The judicial method by which courts seek to determine whether a man is competent to make a will is quite different from the theoretical process of the medical expert witness. It resembles more the process which alienists themselves adopt in examining a living patient, for they rely upon concrete objective symptoms ascertained by tests which experience teaches them to apply. . . . But, medical men, testifying as expert witnesses, make deductions from assumptions embodied in hypothetical questions, being

asked to accept statements of lay witnesses as to symptoms which in their day-to-day practice they would not think of accepting without surely subjecting them to the tests referred to. It is impossible for the medical profession by theoretical expositions to change the judicial process of investigation . . . and the unfortunate condition remains that by the present system litigants are subjected to burdensome expense, and the time of the courts and juries is unduly occupied with evidence, which, in the main, is treated with scant respect."

In view of the above comments, it is evident that the hypothetical question is responsible for the variance of opinions and tends to obscure rather than enlighten the judge and jury. A closer study should be made of the character and value of medical expert testimony as well as the profitlessness of the hypothetical question and until such an attitude is taken, the bringing out of expert medical evidence may indefinitely continue to reflect discredit upon not only the physician, but also medical science in general.—Frederic J. Farnell, M. D. From *Rhode Island Medical Journal,* February, 1923.

Bill to Curb Improper Use of Pistols and Revolvers.—House Bill No. 74, introduced by Representative Thomas J. Myers of Benton, will, if enacted, make the purchase of pistols and revolvers by criminals and other improper persons extremely difficult, if not impossible, and will also minimize the unauthorized carrying of such weapons on the person or in vehicles. There was a hearing on the bill at Springfield on Friday, March 6th.

The bill provides that all dealers in firearms must be licensed and may sell pistols and revolvers only to citizens personally known or properly identified to them. A record of each sale, bearing the signatures of the purchaser and seller, must be filed with the authorities. Dealers must not display pistols and revolvers where they can be seen from the outside of the store.

Persons of good character are permitted to keep a pistol or revolver in their homes or places of business for protection or other proper uses, but the owners of such weapons are not permitted to carry them abroad on their persons or in a vehicle without first obtaining a license from the proper authorities, who will require convincing evidence of necessity.

Possession of a pistol or revolver by a person committing or attempting to commit a felony is regarded by the bill as prima facie evidence of criminal intent and is punishable by a mandatory sentence of five years' extra imprisonment. Aliens and persons who have been convicted of a felony are not permitted to possess a weapon of this description.

Another important feature of the Myers bill is the severity of the penalties provided for violations. In all possible instances the imposing of penalties is made mandatory, the intent being that by doing away with any leniency, the use of pistols and revolvers by criminals and the unauthorized carrying of concealed weapons of this character may effectually be curbed.

Representative Myers has modelled his bill after the measure now before both houses of Congress for application in the District of Columbia, which has the endorsement of the International Association of Chiefs of Police. The Myers bill is approved by the United States Revolver Association, which is endeavoring to secure the enactment of similar laws by all of the states in an effort to stamp out the criminal use of weapons of this character.

Administering the Law in New York.—The "New York Times" of February 24, 1923, discussing the proceedings of the American Law Institute, cited remarks by ex-Governor Hadley of Missouri to the effect that the administration of the criminal law in most of the American states was a disgrace. Mr. Hadley is reported to have said that, in eleven "typical" states and in 1,426 "typical" criminal cases, the average number of reversals had been 33 1/3 per cent. "In other words, the trial judges were wrong in one out of every three criminal cases."

Conditions are, undoubtedly, alarming; and will, we fear, never improve unless we limit the practice of the law to those who know something about it. This would, of itself, better the quality of the bench. We doubt, however, whether conditions are as black as Mr. Hadley paints them.

We assume that New York is included in Mr. Hadley's "typical" states, but are at a loss to understand how his 1,426 "typical" cases were selected. We doubt whether the enormous percentage of reversals (33 1/3) will be found in New York; and the statistics in one class of criminal appeals, capital cases, show that the percentage of reversals in such cases is materially lower.

During the last thirty-five years, under Laws 1887, Chap. 493, appeals in capital cases have gone directly to the Court of Appeals, the prior intermediate appeal having been abolished in 1887. In these capital cases the Court of Appeals has plenary power to reverse upon the law, upon the facts or if the interest of justice requires. The state pays the expenses. It it understood that McKinley's assassin, Czolgosz, is the only murderer who has failed to take his case to the Court of Appeals since 1887.

Since 1887, and down to the close of 1922, that court has disposed of 427 appeals in capital cases, all being cases of murder in the first degree. The results have been as follows:

Affirmances		362
Reversed and new trials granted	63	
Reversed and remitted	2	
Total reversals		65
Grand total		427

The two cases "remitted" were Nesce (201 N. Y. 111) and McGrath (202 N. Y. 445). The Nesce decision amounted to an affirmance. The McGrath case was unusual; and the decision, in effect, reduced the conviction from one of murder in the first degree to one of murder in the second degree. The two "remitted" cases make it difficult to determine the just percentage of reversals. But one thing is certain, that the just percentage is about one-half of Mr. Hadley's startling 33 1/3 per cent.

Of the grand total of 427 cases, 134 were New York County cases. Of these, 117 were affirmed, 16 were reversals with new trials and 1 (McGrath) was reversed and remitted. The reversals were, roughly, 1 in 8. Since June, 1916, these New York County appeals have resulted in twenty-six affirmances without a single reversal down to the end of 1922. Statistics often deceive. But here we have the large number of 427 cases disposed of by a single court during a period of over thirty-five years. They demonstrate, at least, that the percentage of reversals in New York capital cases falls far short of Mr. Hadley's alarming figure of 33 1/3 per cent.

The writer will be permitted to add that he has been keeping track of these New York decisions for the last twenty years, and that he argued seventy-nine of the appeals above tabulated.—Robert C. Taylro, Assistant District Attorney. From the *N. Y. Times,* March 14, 1923.

On Control of Immigration.—[67th Congress, 4th Session. H. Res. 476. In the House of Representatives, December 30, 1922. Mr. Cable submitted the following resolution; which was referred to the Committee on Immigration and Naturalization and ordered to be printed]:

RESOLUTION

WHEREAS, Section 3 of the Immigration Act of February 5, 1917, provides for the exclusion from the United States of physically, mentally, and morally unfit aliens; and

WHEREAS, The procedure at the ports of entry for detecting mental defects amongst arriving aliens is not complete; and

WHEREAS, Scientific research has brought to perfection certain methods for measuring mental capacity known as "intelligence tests"; and

WHEREAS, Mental tests given to soldiers of the United States during and since the World War; as applied by the United States Public Health Service to a limited number of immigrants of doubtful admission; as used by the United States in civil service examinations; as used in schools, colleges, and universities in classifying pupils and students; as used by insurance and other large companies in selecting salesmen; as used in large industries for classifying men in work most adaptable to them; as used by business enterprises in the selection of office force, have demonstrated that such intelligence tests can be effective and feasible for the selection of desirable immigrants; and

WHEREAS, Students of the problems relating to immigration have indicated a belief that the standard of immigrants seeking admission to the United States may be raised by the application of the intelligence tests, and the Secretary of Labor and the Surgeon General of the United States Public Health Service have already full legal power and authority to apply such tests: Therefore be it

Resolved, That the Secretary of Labor and the Surgeon General of the United States Public Health Service be, and they are hereby directed, if not incompatible with the public welfare, to inform the House of Representatives why said scientific data, including intelligence tests being now used in a limited number of cases, cannot be applied in all cases for the exclusion from admission to the United States of undesirable immigrants.

On Carrying Firearms.—[Assembly Bill (California) No. 32. Introduced January 15, 1923. Referred to Committee on Judiciary]:

An act to amend sections three, six and seven of an act entitled "An act relating to and regulating the carrying, possession, sale or other disposition of firearms capable of being concealed upon the person; prohibiting the possession, carrying, manufacturing and sale of certain other dangerous weapons, and the giving, transferring and disposition thereof to other persons within this state; providing for the registering of the sales of firearms; prohibiting the carrying or possession of concealed weapons in municipal corporations; providing for the destruction of certain dangerous weapons as nuisances and making it a felony to use or attempt to use certain dangerous weapons against another," approved May 4, 1917, and to add two new

sections to said act to be numbered six a and seven a, relating to the carrying of concealed weapons.

The people of the State of California do enact as follows:

SECTION 1. Section three of an act entitled "An act relating to and regulating the carrying, possession, sale or other disposition of firearms capable of being concealed upon the person; prohibiting the possession, carrying, manufacturing and sale of certain other dangerous weapons and the giving, transferring and disposition thereof to other persons within this state; providing for the registration of the sales of firearms; prohibiting the carrying or possession of concealed weapons in municipal corporations; providing for the destruction of certain dangerous weapons as nuisances and making it a felony to use or attempt to use certain dangerous weapons against another," approved May 4, 1917, is hereby amended to read as follows:

SEC. 3. Every person in this state other than peace officers or members of the military forces who purchases or has in his possession any pistol, revolver or other firearm capable of being concealed upon the person without having a permit to so purchase or possess such firearms as hereinafter provided in section six of this act, and every person in this state who carries any pistol, revolver or other firearm other than peace officers or members of the military forces concealed upon his person, without having a license to carry such firearm as hereinafter provided in section six *a* of this act, shall be guilty of a misdemeanor, and if he has been convicted previously of any felony, or of any crime made punishable by this act, he is guilty of a felony.

SEC. 2. Section six of said act approved May 4, 1917, is hereby amended to read as follows:

SEC. 6. It shall be lawful for the board of police commissioners, chief of police, sheriff, city marshal, town marshal or other head of the police department of any city, county, city and county, or other municipal corporation of the state, upon proof before said board or officer, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof to issue to such person a permit to purchase and possess, a pistol, revolver or other firearm, capable of being concealed on the person, which permit shall bear a serial number; *provided, however,* that the application to purchase and possess such firearm shall be filed in writing and shall state the name and residence of the applicant, the nature of the applicant's occupation, the business address of applicant, the nature of the weapon sought to be purchased and possessed and the reason for the filing of the application to purchase and possess the same.

SEC. 3. A new section to be numbered section six *a* is hereby added to said act, approved May 4, 1917, to read as follows:

SEC. 6*a*. It shall be lawful for the board of police commissioners, chief of police, sheriff, city marshal, town marshal, or other head of the police department of any city, county, city and county, town or other municipal corporation of the state, upon proof that the person applying therefor is of good moral character and that good cause exists for the issuance thereof, to issue to such person a permit to carry concealed a pistol, revolver or other firearm, which license shall bear a serial number; *provided, however,* that the application to carry such concealed firearms shall be filed in writing and shall state the name and residence of the applicant, the nature of the applicant's occupation and the

business address of the applicant, the nature of the weapon sought to be carried and the reason for the filing of the application to carry the same.

SEC. 4. Section seven of said act approved May 4, 1917, is hereby amended to read as follows:

SEC. 7. Every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, of a size capable of being concealed upon the person, whether such seller, lessor or transferrer is a retail dealer, pawnbroker or other except as hereinafter provided, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, caliber, or other marks of identification on such pistol, revolver or other firearm; *provided,* that no sale, lease or transfer of any such pistol, revolver or other firearm of a size capable of being concealed upon the person shall be made until the person to whom such sale, lease or transfer is to be made shall have procured and produced the license provided for in section six of this act. The person making such sale, lease or transfer shall insert in the register herein provided for, the name of the person issuing such license, together with the number thereof. Such register shall be prepared by and obtained from the state printer and shall be furnished by the state printer to said dealers on application at a cost of three dollars per one hundred leaves in duplicate and shall be in the form hereinafter provided. The purchaser of any firearm, capable of being concealed upon the person, shall sign, and the dealer shall require him to sign his name and affix his address to said register in duplicate as a witness to the signatures of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor. The duplicate sheet of such register shall on the evening of the day of sale be placed in the mail, postage prepaid, and properly addressed to the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the city, city and county, town or other municipal corporation wherein the sale was made; *and provided, further,* that where the sale is made in a district where there is no municipal police department, said duplicate sheet shall be mailed to the county clerk of the county wherein the sale is made. A violation of any of the provisions of this section by any person engaged in the business of selling, leasing or otherwise transferring such firearms is a misdemeanor. This section shall not apply to wholesale dealers in their business intercourse with retail dealers nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms as merchandise by mail, express or other mode of shipment, to points outside of the State of California. The register provided for in this act shall be substantially in the following form:

Sheet No. .....
Series No. .....

(Original.)

DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL

STATE OF CALIFORNIA

Notice to dealers:

This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.

Carbon duplicate must be mailed on the evening of the day of sale, to head of police commission, chief of police, city marshal, town marshal or other head of the police department of the municipal corporations wherein the sale is made,

or to the county clerk of your county, if the sale is made in a district where there is no municipal police department. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil.

.....
Name of person or department issuing license.
License number. .....
Sold by ..... Salesman .....
City, town or township.....
Description of arm (state whether revolver or pistol).....
Maker..... Number..... Caliber.....
Name of purchaser.....age.....years.
Permanent residence (state name of city, town or township, street and number of dwelling) .....
Height .....feet .....inches. Occupation.....
Color..... skin..... eyes..... hair.....
If traveling or in locality temporarily, give local address.....
Signature of purchaser.....
(Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)
Witness ....., salesman.
(To be signed in duplicate.)

Series No. .....
Sheet No. .....

(Duplicate)

DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL
STATE OF CALIFORNIA

Notice to dealers: This carbon duplicate must be mailed on the evening of the day of sale as set forth in the original of this register page. Violation of this law is a misdemeanor.

.....
Name of person or department issuing license.
License number .....
Sold by ..... Salesman.....
City, town or township.....
Description of arm (state whether revolver or pistol).....
Maker..... Number..... Caliber.....
Name of purchaser..... age.....years
Permanent address (state name of city, town or township, street and number of dwelling) .....
Height .....feet .....inches. Occupation.....
Color..... skin..... eyes..... hair.....
If traveling or in locality temporarily, give local address.....
Signature of purchaser.....
(Signing a fictitious name or address is a misdemeanor.) (To be signed in duplicate.)
Witness ....., salesman.
(To be signed in duplicate.)

SEC. 5. A new section to be numbered seven *a* is hereby added to said act approved May 4, 1917, to read as follows:

SEC. *7a.* No person, firm or corporation engaged in the business of selling, leasing, or otherwise transferring a pistol, revolver or other firearm, capable of being concealed upon the person, shall exhibit such weapon to public view in his place of business.

On Prevention of Procreation.—[Assembly Bill (California) No. 828. Introduced January 31, 1923. Referred to Committee on Judiciary]:

An act to add a new section to the Penal Code to be numbered six hundred forty-five, relating to prevention of procreation of habitual criminals and persons convicted of rape or carnal abuse of females under the age of ten years.

The people of the State of California do enact as follows:

SECTION 1. A new section is hereby added to the Penal Code to be numbered six hundred forty-five, and to read as follows:

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

On Habitual Criminals.—[Assembly Bill (California) No. 218. Introduced January 23, 1923. Referred to Committee on Judiciary]:

An act to add a new section to the Penal Code, to be numbered six hundred forty-four, relating to habitual criminals.

The people of the State of California do enact as follows:

SECTION 1. A new section is hereby added to the Penal Code, to be numbered six hundred forty-four, and to read as follows:

644. Every person convicted in this state of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in the state penitentiary for not less than ten years.

Every person convicted, whether in this state or elsewhere, of any crime, which under the laws of this state would amount to a felony, shall be punished by imprisonment in the state penitentiary for not less than life; *provided, however,* that nothing in this act shall abrogate or affect the punishment of death in any and all crimes now or hereafter inflicting such punishment of death.

Probation in New York State.—*The Crime Wave and Probation.* Public interest and indignation has been aroused during the past two years in the problem of crime and the treatment of offenders through the widespread and unusual publicity given to a number of serious crimes of violence. Dramatic stories of hold-ups and spectacular tales of sordid crimes of violence have appeared almost daily in the press until the general public is apt to be convinced that criminal jurisprudence has broken down and that there exists in the United States a serious crime wave.

Widely divergent opinions but no adequate or convincing statistics have been given for the supposedly large increase in crime. It has been charged to the after-effects of the war, to the lax enforcement of the Volstead act, to unemployment, to lenient judges, to the technicalities surrounding the indictment, trials and appeals of offenders and to the mollycoddling of offenders by ill-advised meddlers and the resultant laxity in quick, adequate punishment of criminals.

The modern and more humane methods of dealing with offenders—suspended sentence, probation and parole—have also come in for their full share of criticism. It has been stated that not only are these methods used extensively and indiscriminately, but that hardened and habitual offenders convicted of serious crimes have had their sentences suspended or were released "on probation" or "parole."

No distinction has been made between the social value of suspended sentence and probation laws and the operations of the system in any particular court or locality. Inefficient administration of probation is due mainly to the failure on the part of public officials in many states to provide either adequate salaries for or a sufficient number of probation officers. Without discriminating between the law and the operation of the law, drastic recommendations have been made in several western and southern states to repeal existing laws relating to suspended sentence and probation. The public press reports that the Law Enforcement Committee of the American Bar Association has or will recommend "the withdrawal from trial judges the power to admit to probation."

Unfortunately, the critics, in discussing the relation of suspended sentence, probation and parole to the causes of the present "crime wave," have used these terms interchangeably. These three terms—suspended sentence, probation and parol—as used generally in the statutes of New York State have acquired a specific meaning. Suspended sentence is the release of an offender without further supervision. Unless the offender is again arrested for another crime the original sentence is never imposed. The suspension of sentence without proper probationary oversight is a pernicious practice that ought to be corrected. The offender has been given his liberty upon the presumption that he will not abuse the leniency of the court. The court should know whether such proves to be the case.

The weakness of suspending sentence without supervision or an adequate knowledge of the immediate past of the offender is possibly best shown by citing the case of a now notorious offender, who has been described by the judge who suspended sentence as "the meanest thief in New York."

In 1912 this man was arrested for stealing a change purse and a sandwich from a young girl on her way to work. He was convicted in one of the county courts, and the day he was to be sentenced his "wife and four children" appeared in court. The man told a pathetic story to the judge regarding his wife's health, and the dire needs of the family. The judge, touched by his story, not only suspended sentence, but started a collection of $100 as a contribution to the supposedly needy family. Later disquieting rumors regarding this offender came to the judge who had suspended sentence and he requested that an investigation be made. The investigator found that not only was the man unmarried, but that the alleged "wife and four children" had disappeared. So had the offender.

In 1914 the man was again arrested and convicted and the sentencing judge, having knowledge of the trick played upon his colleague, sentenced "the meanest

thief" to five years in one of the state's prisons. In June 20, 1922, he was again arrested for pick-pocketing by the same detective who arrested him ten years before. He blithely told of his experiences and his former record and laughed when the police recalled the "family" he had brought into court to touch the heart of the judge.

Probation is the term used in connection with the release of an offender under a suspended sentence and without imprisonment, but under the oversight of a probation officer for a definite period of time and for the purpose of reclaiming him from evil courses. Parole is the term used in connection with the conditional release from a penal or reformatory institution after a period of incarceration therein. The term probation has no appropriate use in connection with the oversight of prisoners from reformatories or penal institutions, nor is the term parole wisely applied in connection with the release of offenders under suspended sentence and without imprisonment.

The State Probation Commission, whose responsibility it is to supervise the administration of probation in New York State, has, since its creation in 1907, kept records of the number of offenders placed on probation and the reported results of probation. The Commission, through its intimate knowledge of the work of all probation officers in the state gained through monthly and yearly reports as well as by personal investigations, points out that the use of probation in New York State has been of gradual development, and that official statistics do not show that judges have either used probation indiscriminately or placed on probation in any one year an unusually large number of persons convicted of serious offenses.

The Commission has never advocated and never will advocate probation as a cure-all or a treatment to be applied even once in every case. Since its creation it has pointed out that while probation is a valuable institution it cannot be used in all cases, even of juvenile offenders, as a proper substitute for commitment. To fail to place the offender under a vigorous corrective discipline when such course is clearly indicated by the circumstances of the offense and previous record and character and present disposition of the offender is an evil only less serious than to imprison the offender when the circumstances would justify his release upon probation. Probation is no panacea for crime. There is little doubt that from time to time offenders are released on probation who should not be, but no group has emphasized the need for carefully selecting the offenders who are to benefit by the system through careful and thorough preliminary social investigations before sentence, more than the probation officers and others interested in the same development of the probation system. Probation was never intended for the confirmed or habitual offender, the feeble-minded, the psychopathic or the insane. Sentimental leniency and haphazard inefficiency in the treatment of criminals and delinquents are fraught with grave social consequences. The facts, however, indicate that judges in this state thoroughly realize their responsibility to the community and to offenders and in general have carefully selected those whom they placed on probation.

The provisions of the probation law in New York State are as extensive and as liberal as in any state in the Union. It allows judges to place on probation offenders convicted of any crime not punishable by death or life imprisonment. Probation is probably used as a method of social control as extensively in this state as in any state in the country. Official figures, not opinions, show that over 90 per cent of all adults placed on probation during the past fourteen years

have been convicted of misdemeanors or lesser offenses. It appears extremely doubtful if the critics of probation can legitimately charge that the 9 per cent placed on probation for serious offenses—felonies has been a minor factor in the "breakdown of criminal jurisprudence" or in producing the present "crime wave."

In support of the above statements a brief summary follows of the development of probation in New York State and official statistics regarding the use and results of probation in this state for a fourteen-year period,—October 1, 1907, to September 30, 1921.

The Development of Probation in New York State

The courts of record in New York State have always possessed the power to release convicted offenders under a suspended sentence, and that power has been exercised from time immemorial, but without any provision for oversight or supervision of the persons so released. In 1893 this power was explicitly recognized by statute.

The first probation law was enacted in 1901. The Code of Criminal Procedure was amended by inserting section 11-a and amending several other sections. The act provided for the appointment of probation officers by courts having original jurisdiction of criminal actions in all cities of the state and outlined briefly the duties of probation officers. The act applied only to persons over sixteen years of age. During the next four years the provisions of the law were amended several times. The principal changes made were that the probation law theretofore applicable only to cities was made applicable to all parts of the state; the limitation of the application of the law to persons over sixteen years of age was stricken out, making the law applicable to children as well as adults.

Since 1905 additional amendments relating to probation and its administration have been made. The present general probation law and the law relating to the duties of probation officers are as follows:

> "Penal Law. Sec. 2188. Duty of court to sentence; suspending sentence; suspending execution of judgment; probation.
>
> "The several sections of this chapter which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court or magistrate authorized to pass sentence to determine and impose the punishment prescribed; but a court or magistrate authorized to impose sentence upon conviction of any crime not punishable by death or life imprisonment, or in any case of juvenile delinquency, or in any other proceeding of a criminal nature, whether the defendant has previously been convicted of a crime, may suspend sentence or impose sentence and suspend the execution of the whole or a part of the judgment and may in their case place the defendant on probation in accordance with the provisions of section eleven-a of the code of criminal procedure. No provision of this chapter or of the code of criminal procedure or of any general statute shall be construed to prevent the court or magistrate authorized to impose sentence from exercising discretion to suspend sentence or suspend the execution of the whole or a part of the judgment or to place on probation as hereinabove provided. If sentence shall have been suspended, or, if sentence shall have been imposed and execu-

tion of the whole or a part of the judgment shall have been suspended, at any time thereafter within the longest period for which a defendant might have been committed in the first instance, or, if the defendant is on probation and the period of probation exceeds the period for which the defendant might have been sentenced, at any time while the defendant remains on probation, the court or magistrate having jurisdiction may issue process for the rearrest of the defendant, and when such defendant is arraigned may, if sentence shall have been suspended, impose any sentence or make any commitment which might have been imposed or made at the time of conviction or may, if sentence shall have been imposed and execution of the whole or part of the judgment suspended, revoke the order suspending execution of judgment and order executed the judgment or the part thereof the execution of which shall have been suspended or may modify the judgment so as to provide for the imposition of any punishment which might have been imposed at the time of conviction. Provided, however, that the imprisonment directed by the judgment shall not be suspended or interrupted after such imprisonment shall have commenced."

"Code of Criminal Procedure. Sec. 11-a. 2. Duties of probation officers. Every probation officer, when so directed by the court, or by a magistrate of the court, in which he is serving, shall inquire into the antecedents, character and circumstances of any person or persons accused within the jurisdiction of such court, and into the mitigating or aggravating circumstances of the offense of such person, and shall report thereon in writing to such court or magistrate. The term 'probationer' shall mean a person placed on probation. It shall be the duty of every probation officer to furnish to all persons placed on probation under his supervision a statement of the period and conditions of their probation, and to instruct them concerning the same; to keep informed concerning their conduct and condition; to aid and encourage them by friendly advice and admonition, and by such other measures, not inconsistent with the conditions imposed by the court or magistrate, as may seem most suitable to bring about improvement in their conduct and condition; to report in writing at least monthly concerning their conduct and condition to the court having jurisdiction over such probationers, or to a magistrate thereof; to keep records of their work; to keep accurate and complete accounts of all moneys collected from probationers, to give receipts therefor and to make at least monthly returns thereof; to perform such other duties in connection with such probationers as the court or magistrate may direct; and to make such reports to the state probation commission as the commission may require. Any probation officer may act as parole officer for any state penal or reformatory institution when so requested by the authorities thereof, and when requested by the county judge shall act as parole officer over persons released on parole under section nine hundred and ten.

"3. Powers of probation officers. Every probation officer may require such reports by probationers under his care as are reasonable or necessary and not inconsistent with the conditions imposed by the court or magistrate. Every probation officer shall have as to persons placed on probation under his care, the powers of a peace officer.

"4. Methods of procedure. When any court suspends sentence and places a defendant on probation it shall determine the conditions and period of probation, which period of probation shall not exceed, in the cases of

children, their eighteenth birthday; in the case of any other defendant convicted of an offense less than a felony, two years; and in the case of any other defendant convicted of a felony, five years. The conditions of probation shall be such as the court shall in its discretion prescribe, and may include among other conditions any or several of the following: That the probationer (a) shall indulge in no unlawful, disorderly, injurious or vicious habits; (b) shall avoid places or persons of disreputable or harmful character; (c) shall report to the probation officer as directed by the court or probation officers; (d) shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; (e) shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; (f) shall, if a child of compulsory school age, attend school; (g) shall, if an adult, or if a child but not required to attend school, work faithfully at suitable employment; (h) shall remain or reside within a specified place or locality; (i) shall abstain for a reasonable period from the use of alcoholic beverages, if the use of the same contributed to his offense; (j) shall pay in one or several sums a fine imposed at the time of being placed on probation; (k) shall make reparation or restitution to the aggrieved parties for actual damages or losses caused by his offense; and (l) shall support his wife or children. The court or a magistrate thereof may modify the conditions and the period of probation; may in case of violation of the probationary conditions issue a warrant for the arrest of the probationer; and may at any time discharge the probationer; and in case of violation of the probationary conditions, the court may impose any penalties which it might have imposed before placing the defendant on probation, provided that, if committed, he be committed to an institution authorized by law to receive commitments for the offense of which he was originally convicted, and of persons of his age at the time of his commitment. If a probationer without permission disappears from oversight, or departs from the jurisdiction of the court, the time during which he keeps his whereabouts hidden or remains away from the jurisdiction of the court may be added to the original period of probation."

The passage of the first probation law did not mean the establishment of an erective probation system throughout the state. The use of probation at first developed slowly and irregularly. In some places good work was done; in some places bad, and in most places not any. The special State Probation Commission appointed in 1905 to "make a careful inquiry into the operations of the probation system in the State of New York" in its report to the Governor in 1906, said: "The appointment of probation officers has been carried into effect in but few of the courts." Describing the irregularity and inconsistency of the work done, it said:

"The underlying weakness of the probation system as now conducted is to be found in the very large number of courts possessing the power of appointment of probation officers and in the absence of any supervision, coordination or organization of the work of probation officers, except such as may be exercised by the courts to which they are attached. There are practically as many systems of probation as there are courts using the probation law."

To aid in curing these evils and to extend the probation service to all courts of the state, this Commission recommended central state supervision. Their report said:

> "We are, therefore, strongly of the opinion that, while probation work must always be permitted a considerable degree of flexibility to meet local conditions and individual needs, there should be provided, nevertheless, some form of central oversight. This should involve the collection of information in regard to the extent to which probation is utilized in different portions of the state from time to time, the manner in which probation work is carried on, and the value of the results secured. It should include the authority to make formal and detailed investigations of probation work in any given court or locality, when such are deemed advisable; it should provide for the making of suggestions to the legislature from time to time for the improvement of the probation system, and for recommendations from time to time to public authorities, judicial and executive, concerned in the administration of probation; it should involve the promotion of probation work in those localities in which it is not availed of."

As a result of the report the Legislature in 1907 passed a bill creating a permanent commission (the present State Probation Commission). This Commission is authorized "to exercise general supervision over the work of probation officers, to keep informed as to their work, to improve and extend the probation system, to collect and publish information thereon and make recommendations.

The Development of Probation in New York State from October 1, 1907, *to September* 30, 1921

Prior to the creation of the State Probation Commission in 1907, there were no statistics available as to the extent of the use of probation. In that year the probation system was reported as used in 16 cities, 1 village and 11 county courts. The growth of the system during the next fourteen years has lead to its use in 54 of the 59 cities of the state, in over 38 towns and villages, and in 51 of the 62 county courts besides in the Supreme Courts in a number of counties.

The first appropriation for a publicly salaried probation officer was made in 1904. In 1907 the number of publicly salaried probation officers was 35. In 1921 this number had increased to 249. Not until 1908 was it permissible for counties to make appropriations for probation service, and in that year there were 8 publicly salaried county probation officers appointed. In 1921, 35 counties had provisions for salaries of officers who served not only in the County and Supreme Courts, but in the courts of third class cities and in the justices' courts.

In 1908 (the first year complete statistics were compiled) 8,762 individuals were placed on probation. During the past fourteen years (October 1, 1907, to September 20, 1921), a total of 233,100 persons, 72,003 or 30.9 per cent children, and 161,097 or 69.1 per cent adults, have been placed on probation.

Of the 161,097 adults placed on probation during this period 146,316 or approximately 91 per cent were convicted of misdemeanors or lesser offenses. Of the 146,316 placed on probation for misdemeanors or lesser offenses, 42,640 or 29 per cent of this number were placed on probation for non-support. It is

interesting to note the increasing use of probation in the treatment of non-supporting and deserting husbands. In 1908, 679 or 15.1 per cent of all adults placed no probation for misdemeanors were guilty of this charge, and in 1921, the number and percentage had increased to 6,336 or 48.8 per cent.

If 1915 is taken as a normal year and compared with 1921, when the so-called "crime wave" was at its crest, it will be found that the numbers of offenders placed on probation for misdemeanors and lesser offenses against the person or property—assault, disorderly conduct, petit larceny and violation of local ordinances—actually decreased by approximately 700.

While in the opinion of the Commission probation in its application should not be limited to those who have been convicted of minor offenses (misdemeanors), the fact remains that the largest number of felons placed on probation in any one year was 1,409. Only 14,781 offenders, or 9 per cent of the total number of adults placed on probation in fourteen years, were convicted of offenses technically termed felonies. If the years 1915 and 1921 are again compared it will be found that the number placed on probation convicted of crimes against the person and property—assault, burglary, forgery and grand larceny—increased by only 52. The total number of felons placed on probation in 1915 was 1,365, and in 1921, 1,398, and of this 1,398, 156 were convicted of abandonment.

Omitting the cases where the final results are unknown, 206,298 persons were discharged from probation during the fourteen-year period. In 159,939 cases, or 78.5 per cent, the results of probation were satisfactory and the offenders were discharged as improved. Only 22,560 probationers, or 10.9 per cent, were rearrested and committed, and 11,703 probationers, or 5.7 per cent, were discharged unimproved; 10,096, or 4.9 per cent, absconded.

While 233,100 persons were placed on probation during the fourteen-year period, probation officers made a total of 306,942 preliminary investigations, and since 1915, when the first records were kept, have made 797,160 home and other visits. The number of preliminary investigations made is an indication that the judges made use of the services of probation officers to investigate the previous record and character of offenders before placing them on probation, and that probation officers frequently recommended that certain offenders are unsuitable for probation treatment. The number of home and other visits is an index to the constructive supervision given to probationers and a blow at the theory that probation consists merely of having offenders report to a probation officer once or twice a month.

They also collected from probationers a total of $5,504,212.39. Of this amount, $4,726,388.52 was collected from non-supporting and deserting husbands for family support; $268,780.59 for fines paid in installments. and $509,043.28 for restitution. Probation officers also supervised the additional payment under court orders of $2,816,900.71 direct to beneficiaries.

During the four years (1918 to 1921) the total number placed on probation each year has remained approximately the same. However, the number of boys placed on probation has decreased each year for the past four-year period, while the number of girls and women has remained approximately the same. The large increase in the number of men placed on probation in 1921 over 1920 is due not to offenders place on probation for felonies but to persons charged with either non-support or public intoxication.

The number of adults placed on probation for misdemeanors that technically can be termed offenses against the persons—assault and disorderly conduct—shows no abnormal increase in any year. In fact, the number placed on probation for assault in a normal year like 1915 was greater than the number placed on probation during any year from 1918 to 1921. This statement is equally true regarding the number placed on probation for disorderly conduct. In 1915, 2,257 adults were placed on probation for this offense. while in 1921, 1,789, a decrease of 468 over the year 1915.

The number placed on probation for offenses against property—petty larceny—in 1921, also shows a decrease over the figures of 1915. The largest number placed on probation for this offense occurred during the year 1918, when 2,866 persons were placed on probation. In 1920 the number decreased to 1.974 and in 1921 another decrease occurred and only 1,862 adults were placed on probation for petit larceny.

As has been previously stated and as the statistics indicate, the increased use of probation for adults guilty of misdemeanors or lesser offenses is due primarily to the use of probation for offenders charged with deserting or failing to properly provide for their families.

The greatest number of offenders convicted of felonies and placed on probation in any one year during the fourteen-year period (1907 to 1921) was 1,409. Only 9 per cent of the total number of adults placed on probation were convicted of felonies. For assault, burglary and forgery the number placed on probation in 1921 was not only less than in 1915, but the number placed on probation for these offenses shows a decrease over 1915 for each year from 1918 to 1921.

While there is an increase in 1921 of 213 over the year 1915 in the number placed on probation for grand larceny, it is pointed out that in 1921 the number placed on probation for this offense was less than the number placed in 1919, when no "crime wave" existed.

The reported results of children discharged from probation with improvement has varied little during the fourteen-year period. Over 80 per cent of all children discharged from probation have been discharged improved, while only 4 per cent have been discharged without improvement, and approximately 14 per cent were rearrested or committed to institutions. It is interesting to note the decrease in the percentage of commitments to institutions since 1915. Less than 1 per cent of the children placed on probation absconded or were lost from oversight.

The reported results in the cases of adults discharged from probation shows that over 75 per cent were discharged improved, while less than 10 per cent were rearrested or committed, and on the average less than 7 per cent were either discharged unimproved or absconded.

The number of preliminary investigations made is an index to the care used by judges in selecting offenders for probation. While 233,100 persons were placed on probation, 306,942 preliminary investigations were made.

While the probation service is not intended as a collection agency, the advantages of having a court direct its probation officer in appropriate cases, to make collections for non-support, fines paid in installments and for restitution was early recognized.

The use of probation for collecting payments from men for the support of their families has increased each year. Before probation was used the non-

supporting or deserting husband was usually sent to jail and his family suffered from lack of the necessities of life or became objects of charity.

The evils of imprisoning a person because he is unable to pay a fine in full at the time of his conviction have been frequently pointed out by judges and prison officials. Probation may be used to permit the defendant in such a case to avoid imprisonment through going to work and earning the money with which to pay his fine in installments.

When probationers are required to make restitution or reparation for the damages or losses caused by their offenses, the purpose is not so much to compensate the aggrieved parties as to bring about the moral effects that the making of the payments will have on the probationers.

Marked improvements have been made in the operations of the probation system since the creation of the permanent State Probation Commission. The abuses which in the beginning characterized the use of probation are decreasing. The courts before placing persons on probation are more than ever before calling upon probation officers to make preliminary investigations concerning the habits, history. characteristics and circumstances of the defendants.

The short probationary periods of only a few weeks which formerly prevailed in many courts have disappeared. It is being accepted that probation to be effective must, in most cases, extend over a substantial period of time, usually a year. The conditions of probation laid down by the courts when placing defendants on probation are becoming more definite and binding, and the law is being more rigorously enforced against violations. More frequent recourse is had, in appropriate cases, to the collection from probationers of restitution, fines paid in installments and payments for the support of their families.

On the part of probation officers, there is more visitation in the homes of probationers, more discreet and painstaking inquiries from other sources concerning those under their care, more friendly and constructive help and more co-operation with outside agencies. More complete and better case records and accounts are being kept by the probation officers. In the larger courts having a large staff of probation officers the office organization and administration is on a businesslike basis.

The body of experience accumulated during the past years has been studied through field investigations and through analysis and discussion at conferences and in other ways, with the result that there is a better consensus of opinion than ever before concerning the relative value of different probationary methods and the probable lines along which future progress may be expected.

Probation has passed through the testing or experimental stage in New York State. It has proven to be both socially and financially profitable. Its future development, however, is in need of continued careful study, of extension and of intelligent guidance.

Motor Cars and Crime.—"The records of the Criminal Court for 1922 show the motor car as a weapon of murder and assault. As a factor in crimes in urban territory with congested population the stolen motor car today compares with the stolen horse in the days of pioneer settlement when population was sparse and scattered and justice swifter and surer, although more crudely administered.

"The horse thief of the past knew that capture meant death and while in possession of the stolen property had ever before him the picture of his own

lifeless body dangling from a halter. The mental picture before the modern auto thief in event of capture is far different. It depicts arrest, release on bond, conferences in the well-furnished offices of the criminal attorney, trips to courts where policemen vainly plead for action while his attorney obtains delay, conviction perhaps, but a new bond, an appeal to the Supreme Court, fixing of witnesses and eventual escape. The picture may also contain visions of other crimes with the principle the same and with variations as to detail.

"It is the opinion of experts that ninety per cent of Chicago's robberies are preceded by the theft of an automobile. The reduction of motor car thefts in Chicago by forty-one per cent last year was therefore an intelligent and effective blow at robbery. The recovery of eighty-six per cent of all cars stolen in Chicago last year as compared with sixty-six per cent recovered in 1921 was also a check upon crimes other than those concerned in the theft of the cars themselves.

"Motor cars were a factor in 355 felony cases in Chicago (Cook County) in 1922 as compared with 393 in 1921. In these cases in 1922 there were 440 defendants, and in 1921, 510 defendants. The Criminal Court as a whole tightened the grip of justice in 1922 by increasing the per cent of defendants penalized from twenty-five per cent in 1921 to thirty-seven per cent in 1922. It is worthy of notice therefore that with this record of improvement applying to murders, robberies, burglaries and all other felonies tried in the Criminal Court last year, that the number of penalties in auto crimes decreased in 1922 to 26.59 per cent as compared with 31.56 per cent in 1921.

"The higher per cent of penalties was inflicted in the Special Automobile Court presided over by Judge Robert E. Crowe, now State's Attorney, and the work continued under Judge Charles M. McDonald who succeeded him. This would seem to indicate that criminals charged with crimes in which an automobile is a factor have less chance to escape from justice in a single specialized court than when tried in courts widely scattered and handling the regular docket of criminal cases.

"In 1922. Penitentiary sentences, Reformatory sentences and County Jail sentences were fewer in auto crimes than in the previous year. Sentences in the House of Correction, fines, releases on probation and dismissals for want of prosecution increased. Strike-offs and nolle prosse were fewer.

"There were 451 cases involving 785 defendants arraigned during the year, of which number 355 cases and 440 defendants were disposed of, as follows:

Defendants		*Penalized:*	Per Cent	
1921	1922		1921	1922
31	19	Penitentiary	6.08	4.32
62	9	Reformatory	12.15	2.04
51	70	House of Correction	10.00	15.91
15	12	County Jail	2.94	2.73
2	7	Fined	.39	1.59
161	117		31.56	26.59

Released:

161	117	Penalties	31.56	26.59
57	82	Released on Probation	11.17	18.64
41	35	Verdict Not Guilty	8.05	7.95
35	25	Finding Not Guilty	6.87	5.68
44	24	Nolle Prosse	8.63	5.44
13	28	Dismissed for Want of Prosecution	2.55	6.36
1	1	Cause Abated—Defendant Dead	.19	.24
	4	Discharged Account Four-Term Act		.91
	1	Transferred to Juvenile Court		.24
153	123	Stricken off with leave to	30.98	27.95
510	440		100.00	100.00

Kills Policeman—Still Free

"According to the Chicago Safety Council, 660 deaths were caused by automobiles in Chicago and Cook County in 1921, the year in which two indictments for murder by an automobile were tried in the Criminal Court of Cook County. In this case a South Park policeman was killed, deliberately crushed to death, by David S. Groh, who, with his wife, was endeavoring to escape arrest. Groh was out on bond and operated a detective agency in Chicago for nearly a year while awaiting trial. On January 4, 1922, he was found guilty of manslaughter and sentenced to a life term in the Illinois Penitentiary. On May 11, 1922, his bond was forfeited. Later it was reinstated and an appeal taken to the Illinois Supreme Court. But on March 10, 1923, when the order of affirmance of the verdict was issued, Groh could not be found and at this writing is a fugitive from justice. Mrs. Groh was found not guilty in the original trial.

"In this case citizens in the neighborhood in which the slain policeman had resided petitioned the Chicago Crime Commission to keep particular watch on this case. which was done. The defendant. although found guilty by a jury in the Criminal Court, was granted a writ of supersedeas, released on bond and by the time the Supreme Court affirmance was handed down was a fugitive from justice. It is one of the frequently used methods of the defendant and the criminal lawyer in cases of this character.

"In 1922 fifteen manslaughter cases in which an automobile was a factor were tried in the Criminal Court. In these fifteen cases there were thirteen defendants. Here is what happened to them: One went to the Reformatory, juries returned verdicts of not guilty for five, a court found one not guilty, cases against four were stricken off with leave to reinstate, one case was nolle prossed and one case was dismissed for want of prosecution. In one case the felony was waived. Two defendants were tried on the charge of assault with a deadly weapon in which an automobile figured. One was fined and the other dismissed for want of prosecution.

Motor Car Thieves

"In 1922 there were 2,007 robberies committed in Chicago. Guns and stolen automobiles were used in most all of them. During the year 115 defendants were arraigned in the Criminal Court on charges of robbery with a gun, in cases

where the possessor of an automobile was compelled at pistol point to turn the property over to them. By the end of the year cases against fifty-four of them had been disposed of, only twelve of them suffering penalty, seven going to the Penitentiary, four to the Reformatory and one to the House of Correction. Three were released on probation, cases against twenty-five were stricken off, six were dismissed for want of prosecution, five were nolle prossed and there were three verdicts of not guilty. In six instances the gun count was waived. In two cases the robbery count was waived. In only eight cases were there verdicts of guilty. This would indicate that four of the twelve who actually suffered penalty pleaded guilty.

"The cases against the twenty-five stricken off are explained by docket entries, as follows: Ten were not apprehended, in the case of two there was insufficient evidence, in the cases of two more there was no evidence, in the cases against seven no prosecuting witness was present, in one case the prosecuting witness recommended the strike-off and in the cases against three defendants no reason at all was given. The defendant who waived the felony and pleaded guilty to petit larceny was sentenced to a short term in the House of Correction. Of the six defendants who waived the gun count and pleaded guilty to plain robbery, two were sentenced to the Penitentiary, one to the Reformatory and three were released on probation.

"Five auto bandits were tried on plain robbery charges, that is, robbery distinguished from the technical charge of robbery with a gun, three being sentenced to the House of Correction. Cases against two were stricken off.

Automobile Burglaries

"Cases against thirty-six defendants were disposed of in the Criminal Court last year in cases in which automobiles were obtained by burglary. The result was as follows: Penitentiary two, Reformatory one, House of Correction four, County Jail two, released on probation twelve. found not guilty three, strike-offs nine, and dismissed for want of prosecution three. Just one out of four suffered a penalty. One out of twenty went to the Penitentiary, and one of forty to the Reformatory. One out of nine went to the House of Correction, one out of twenty to the County Jail, one out of every three was released on probation, and one out of every four was stricken off.

Larceny Cases

"Four hundred and seventy-one defendants were arraigned for auto larceny and of these 278 were disposed of throughout 1922, in which 82, or less than one out of three, suffered penalty as follows: Eight to the Penitentiary, three to the Reformatory, sixty to the House of Correction, ten to the County Jail, one fined, fifty-eight, or nearly one out of five, were placed on probation after having been found guilty.

"Cases against sixty, or one out of four, stricken off were for reasons assigned as follows: Twenty-two not apprehended, nine insufficient evidence, seven no case, six prosecuting witness not found, two recommendation of prosecuting witness, one on recommendation of State, two testified for State, five restitution made, twelve no reason given, one will be reinstated and two no identification. Felony waivers were allowed in cases involving 121 defendants

out of the 278 arraigned, or forty-three per cent. This happened during the period in which 2,866 cars were stolen in Chicago, 586 of which were not recovered.

Receiving Stolen Property

"In the thirty cases tried during the year in which receiving stolen property was charged and in which the property was an automobile, twenty-six defendants were disposed of, as follows: One sentenced to the Penitentiary, one to the House of Correction, two released on probation, four verdicts of not guilty, six finding of not guilty, seven stricken off, three nolle prossed, one dismissed for want of prosecution and one cause abated because the defendant died before he was tried. The felony was waived in cases of nine out of the twenty-six defendants tried. The reasons assigned for the seven strike-offs were as follows: Defendants not apprehended one, insufficient evidence four, one no case, and one no prosecuting witness present.

"In the one perjury case growing out of an automobile case there was a verdict of guilty and the defendant was released on probation.

"Twenty-five defendants were arraigned during the year in conspiracy cases in which an automobile was a factor. Eighteen of these defendants were disposed of as follows: House of Correction one, fined five, released on probation four, not guilty one, stricken off seven. Reasons for the strike-offs were assigned as follows: Not apprehended four and three insufficient evidence."

The County Jails Must Go.—"Lesser correctional institutions like county jails, workhouses, houses of correction and county penitentiaries, are generally administered as if the idea of reformation were unsuited for the type of offenders incarcerated in these institutions. Far too often the visitor to these institutions hears the callous and weary statement of those in charge, 'We have only bums and drunks in a place like this.' Yet the plain truth is that 'places like this' are institutions through which thousands pass, many of whom are presumably innocent under the law, and many of whom also are later sent to reformatories or prisons where efforts at reformation are uppermost in mind. What a paradox in our treatment of offenders that we make offenders pass through our worst schools first; debasing, filthy training schools of vice and hopelessness.

"The Secretary of the Howard Association of London stated at the time of the last International Prison Congress in 1910: 'The great conviction which thrust itself upon the minds of every one of the foreign delegates with whom I have spoken was the extraordinary quality of your American reformatories, and the extraordinary defects of your town and county jails. Every jail I saw ought to be wiped off the face of the earth.' The Prison Association would not be so iconoclastic. We believe that the county jails and the county penitentiaries can be made places of reformation, yet we are just as firmly of the opinion that so long as jails and penitentiaries in this State and others are under county management, the day of systematic industry and reformative influences in the jails and penitentiaries will be absent. We urge, therefore, as the first step toward the reformation of our county jail system, the extension of the direct control of the State to these institutions.

"The glaring defects and abuses that exist in our county jail system have been described again and again in the reports of this Association. During the

years 1911 to 1918, through the activities of its Bureau of Inspection and Research, the Association persistently campaigned for the abolition of the deplorable idleness existing among sentenced prisoners in the county jails in New York State, and also for the improvement of the living conditions and management of these institutions. While the condition of idleness was relieved in a number of jails. yet it was more and more impressed upon the Association that this problem could not be handled unless the sentenced prisoners were committed to institutions where they could be dealt with in larger units and under more generally favorable circumstances. Indeed the great and overshadowing deficiency of the penal system of the United States can be traced to the county jail. The entire system of arrangement and government in our county jails needs a radical reform—needs in fact revolutionizing. Here is a field of great work for the efforts of prison reform. Its accomplishment is a herculean undertaking, no doubt, but it can be done. Faith, patience, zeal, active and co-operative effort are essential elements of the problem; but these elements being given the solution of the problem, the success of the undertaking is certain.

"The county jail has not found a defender in the many years that it has existed. There are approximately 2,500 of these institutions in the United States, 66 of which are in the State of New York. It is as a system a combination of evils known, exploited, deplored. The entire jail system of the whole State is iniquitous, and the jails themselves are but centers of pollution, deftly, if unintentionally distributed. Civic wisdom has thus far failed to find an effective remedy for the evils of the jail system and the jails. The more modern and improved jail structures scarcely palliate the evils of jail imprisonment, and the county penitentiaries which were established more than half a century ago with good intention only mitigated the evils for a time, and that was more apparent than real. These penitentiaries, hostelries for misdemeanants, were always practically convict prisons managed mainly for profit, but since the enactment of prison labor legislation abolishing the contract system have become but jails where short term prisoners are confined, mostly in idleness and without systematic instruction either in labor or letters. The defects of the jail system briefly are as follows:

"First, the association in idleness and the unrestrained communication of prisoners confined in jails. This pernicious practice is attributable to (a) Defective arrangement of jail buildings, making it difficult to separate the prisoners as they should be during the whole time of their confinement in jail. (b) The difficulty of dealing with the problem of prison labor. (c) The prevalent good-natured careless sentiment with sheriffs, jailers and others to the effect that jail prisoners ought not to be crossed, but should be indulged in their desire to associate and communicate with each other; and then (d) to the common notion that jail prisoners are more tractable when they are thus indulged, and are more serviceable for convenient or supposed economy in performance of routine jail duties.

"Secondly, the use of county jails for imprisonment of prisoners finally sentenced, instead of sending the prisoners to the county penitentiaries. This retention of penitentiary prisoners in jails is explained by the terms of contracts between the counties and the penitentiaries, which are so phrased as to exclude from the penitentiaries prisoners from outside counties sentenced for less than sixty days, and by the practice of magistrates of making sentences often fifty-nine days or less, and so sending prisoners to the jails instead of to

the penitentiaries. By such means the income of the sheriff under the old fee system was increased. The prisoner and his friends were sometimes thus accommodated, and such short sentences to the jail served to satisfy a traditional vague estimation of justice or punishment. *The presence of these sentenced jail prisoners increase the difficulties of jail management, and in truth diverts the jail from its only proper use, namely, for the temporary detention of prisoners who are awaiting the action of the courts.*

"The third cause is parsimony and indifference on the part of the county authorities, the jail officials and the community as to jail administration. There is usually not a sufficient number of employees to supervise the jail prisoners so as to prevent improper communication and contact. The small expenditure required to instruct and occupy the prisoners is withheld and there is generally indifference to and absence of effort for their recovery to logical and provident behavior, whether they are under sentence or awaiting trial.

"The sheriff, with whom the responsibility of keeping the jail is lodged, begins his term without any practical knowledge of jail keeping, and as soon as he has acquired a little experience his term of office expires and he is, under our State constitution, ineligible for re-election. The jail becomes the perquisite of the next successful political manipulator who can capture this desired office. In the management of the jail the sheriff has but the slightest responsibility to the State, and the political party that has put him in charge demands no more of him than that he shall so conduct the jail as to avoid scandal and not affect the majority unfavorably at the next election by making expenses heavier than the patient taxpayer is willing to bear. Prisoners in the county jails are sentenced for breaking State laws—and the State permits the counties to punish them and at once becomes careless as to how they are dealt with.

Attempt at Solution Under Way

"There is at present at work in this State a co-operating group formed for the purpose of solving so far as possible the county jail problem in this State. The chairman of the Committee is Mr. George W. Wickersham, Chairman of the Executive Committee of the Prison Association of New York. The Committee is made up of representatives from the State Commission of Prisons; the Prison Association of New York; the National Committee on Prisons and Prison Labor; the Women's Prison Association; the New York State Federation of Labor; the National Committee for Mental Hygiene; the State Board of Charities; the Westchester County Commission of Charities and Correction; the New York State Federation of Women's Clubs; the State Charities Aid Association; the New York State Association, and the Women's Municipal League. Important data has been collected and it is expected that during the early part of the year the Committee will submit its report and begin its campaign of enlisting the aid of the Governor of the State, members of the Legislature, and various official groups throughout the State in support of its findings and recommendations. Such action will be preparatory to submitting to the 1924 Legislature the necessary measures to make the Committee's plan effective. The action of the Committee is of signal importance and the success of its program in whole or part will be a decided step forward. There is unquestionably need for similar action in practically every State of the Union. The extension of

activities similar to those of the Committee is the only hope for the elimination of the evils of the county jail system throughout the country."

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