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Notes on Current and Recent Events

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Library of Criminology for Sale.—A library of criminology, with special reference to the death penalty, collected by the late General N. M. Curtis of Ogdensburg, N. Y., author of the Act of Congress allowing the substitution of life imprisonment for the death penalty in cases where the federal courts have jurisdiction (U. S. Statutes, v. 29, ch. 29). There are about 300 bound volumes, mostly English imprints, and a collection of pamphlets not listed. A list of the books will be furnished by Miss Florence R. Curtis, University of Illinois, Urbana, Ill. J. W. G.

Prizes for Essays on Crime.—Mr. N. W. Harris, president of the Harris Trust and Savings Bank of Chicago, has offered annual prizes amounting to five hundred dollars for the best essays on certain topics in the field of political science.

For the year 1910-1911 the competition will be confined to undergraduates of all the universities and colleges in the following states: Indiana, Illinois, Michigan, Minnesota, Wisconsin and Iowa. Prizes of fifty dollars each will be awarded to the best production from each of the states, provided there are at least five essays from each commonwealth; and the competitor presenting the best paper from all the institutions represented will receive a prize of two hundred and fifty dollars.

The essays must not exceed 10,000 words, must be typewritten, and must be mailed on or before June 1, 1911, to Professor N. D. Harris, 1134 Forest avenue, Evanston, Ill., marked "for the Harris Political Science Prize." Contestants are required to mark each paper with a "nom de plume," and to enclose in a separate envelope their full name and address, class and college. The donor reserves the right not to award any or all of the prizes offered, whenever the committee shall decide that the essays submitted are not of a quality to deserve the reward. And the donor also reserves the right of publishing the best of the essays in such of the popular magazines, or newspapers, as shall insure a widespread public notice of the work done.

The subject for 1910-1911 is: "The prevalence of crime in the United States; its extent compared with that in the leading European states, its causes and best means of remedy."

For any additional information concerning the scope or the conditions of the contest, inquiries should be addressed to Professor N. D. Harris, Evanston, Ill., chairman of the committee. J. W. G.

Death of an Eminent Russian Criminologist.—Prof. Drill, an eminent Russian criminologist, died at St. Petersburg on November 13 last, in his 64th year. Dr. Drill was an active member of the International Congress of Criminal Anthropology and of the International Prison Congress, was one of the founders of the Criminological Institute, and was Professor of Criminal Anthropology in the Psycho-Neurological Institute and Polytechnic of St. Petersburg at the time of his death. In 1884 he published a book on "Juvenile Delinquents," in which he investigated the psychological and physio-

logical causes of juvenile crime and moral perversity. Subsequently he published many papers on this subject. He drafted the Russian "Children's Act" of 1897, in which were embodied many of the ideas advocated by the promoters of the children's court movement. In his last years he was head of the department of the Prison Commission, which had supervision of the correctional institutions for children. He was the author of various books in the field of criminal anthropology, and was a leader in the movement for penal reform. He strongly criticized the modern prison system of Russia, and was an advocate of the American reformatory system. He studied the penal transportation systems of France, Russia, Siberia, New Caledonia and Sakalien, and pointed out the danger to the newer lands from filling them with criminal outcasts. He accepted the doctrine of criminal degeneracy and considered the crime problem to be a part of the general problem of vice, poverty and inebriety, as a consequence of which he was an advocate of housing reform, settlement work and modern methods of treatment for inebriates.[1] J. W. G.

Court of Domestic Relations for Chicago.—Chief Justice Olson of the Municipal Court of Chicago, has announced the establishment of a new court of domestic relations. The new court will have charge of all cases having to do with abduction of children under 12 years of age, abandonment of wife and children, employment of minor children contributing to the delinquency of children, child labor, compulsory education, playing cards in saloons by minors, minors in dancing halls, selling tobacco and liquor to minors, seduction, gambling of minors in saloons, obtaining of liquor by minors under false pretenses, and cruelty to children. J. W. G.

The Pardoning Power.—Prof. James D. Barnett of the University of Oregon has contributed an article to the *Yale Law Journal* (December, 1910) entitled the "Grounds of Pardon in the Courts." After reviewing the reasons usually assigned by the courts as the basis for the exercise of executive clemency, he concludes as follows:

"It would seem that there are three causes of the persistence of the doctrine of 'grace' in the courts. First, on account of the theory of the separation of powers it is difficult for the courts logically to justify the grounds upon which pardons are usually granted, and should be granted, in actual practice. Again, language suited to the theory of the personal rule of the absolute monarch has been retained in the modern democracy where the executive is but an agent of the sovereign. Last is the pervading influence of the analogy of 'the divine attribute.'" J. W. G.

Prisons in the District of Columbia.—In his address before the International Prison Congress at Washington in October, Attorney-General Wickersham gave the following facts in regard to the prisons of the District:

The jail of the District, originally well built and adequate to its needs, was outgrown, lacked modern sanitary arrangements and finally became the subject of much complaint. Congress was finally induced to authorize the President to appoint a commission to investigate the condition of this jail, as well as of the workhouse and other similar buildings. The commission ap-

[1] From information furnished by Prof. Paul Lublinsky of St. Petersburg.

pointed pursuant to that authority, construing their task as involving something more than mere repair of a building, submitted a report to the President in 1908, which dealt with the whole subject of our present penal system, and which brought sharply to the attention of Congress the necessity of applying improved and modern conceptions of penology to the administration of the federal penal system. As a result of this admirable report, the Congress authorized and empowered the Commissioners of the District of Columbia to purchase two tracts of land, widely separated, of not less than 1,000 acres each, one to be used as a site for the construction and erection of a reformatory of sufficient capacity to accommodate at least one thousand inmates, and the other for the construction and erection of a workhouse of sufficient capacity to accommodate at least five hundred prisoners. The workhouse site has been acquired and is now being cleared and prepared for the buildings to be erected on it, such work being carried on largely by prisoners. J. W. G.

Annual Meeting of the American Anthropological Association.—The annual meeting of the American Anthropological Association was held at Brown University, Providence, R. I., December 28-30, 1910, in connection with the American Folk-Lore Society and the Archaeological Institute of America. The influence of the archaeologists was evident in the papers presented, most of them being of an archaeological nature. Among them were Prof. A. M. Tozzer's account of "Recent Explorations in Northern Guatemala," "The Work of the School of American Archaeology in the Past Year," by Miss Alice C. Fletcher; "Certain Aspects of New Jersey Archaeology," by Dr. Charles Peabody, and the description of "A Pre-Pajaritan Culture in the Rio Grande Drainage," by Prof. E. L. Hewitt. The only paper on physical anthropology on the program was one on "Cretan Anthropometry," by Prof. Charles H. Hawes of Dartmouth College. An especially interesting paper on the program of the Folk-Lore Society was that on "Survivals of Germanic Heathendom in Pennsylvania German Superstitions," by E. M. Vogel, and two papers by Mr. Paul Radin, one on "The Social Organization of the Winnebago Indians," and one on "The Religious Ideas of the Winnebago Indians," were of interest to students of society. E. L.

Abolition of the Defense of Insanity in Criminal Cases.—In the *Michigan Law Review* (December, 1910) Prof. John R. Rood, of the University of Michigan, has a valuable paper on "Statutory Abolition of the Defense of Insanity in Criminal Cases." It is mainly a criticism of the opinions given and the decision rendered by the Supreme Court of Washington in *State v. Strasburg,* 110 Pacific 1020 (Sept., 1910). There a section of the code which abolished the defense of insanity in criminal cases was held unconstitutional. Another section of the code provided that after the defendant was convicted the court, if it appeared that the defendant was insane at the time of the commission of the act or at the trial, might, in its discretion, examine into the condition of the accused, with or without the help of experts, and might order that the defendant be confined until he had revealed his sanity. Judge Morris said that in England, where the constitutionality of the act could not arise, there had been such an act since 1883. Massachusetts has such an act in its Revised Laws of 1909. Mr. Rood analyzes and answers most of the arguments of the Supreme Court.

The abuse of the plea of insanity, so rarely well-founded, has aroused the thoughtful students of our criminal law. It is manifest that counteracting remedies and reforms must be found. A little regulation of expert testimony and of the plea of insanity, together with the official confinement, examination, a careful observation by official experts for a measurable time of all indicted persons who set up this plea, will probably cure the abuse better than a statute like that of Washington, and thus a constitutional objection can be avoided.[1]

Treatment of the Criminal Insane.—Dr. Austin Flint in a paper before the American Medico-Psychological Association at Washington, D. C., in May, 1910, and printed in the *American Journal of Insanity* in October last, calls attention to the numerous and complicated statutes of New York regulating the responsibility and the control of persons insane or claiming the immunity of insane persons from punishment. He wisely recommends that every person confined as insane by order of a court shall be carefully examined at first and observed later, and that a full record shall be kept of his history, condition and conduct for the future guidance of experts and the courts, whenever the question of his sanity is sure or likely to be considered later; and that at fixed reasonable periods sufficient reports shall be made of the status at that time of each person confined in any asylum or prison, such report to state whether the person is curable or not, so that the proper authorities may know when and how to deal with each case. He also properly recommends that the right to apply for a writ of *habeas corpus* by persons confined as insane shall be so limited as to prevent any person making constant and vexatious applications for the writ without reasonable cause for a rehearing.[2]

The New Handwriting Collection of the Berlin Police.—Under the title of "Der neue Handschriftensammlung der Berliner Kriminalpolizei," Dr. Hans Schneickert, in the November (1910) number of the *Archiv für Kriminal Anthropolgie und Kriminalistic,* describes this police adjunct, which differs from anthropometry and dactyloscopy in that it is not applicable in the case of all lawbreakers, but only in the case of the "writing offender." The number of offenders, however, in connection with whose delinquencies an investigation of handwriting is useful, is large in modern societies and is, perhaps, increasing. The system now in use in Berlin is described in this article in full detail. The classification of varieties of handwriting into main groups and subdivisions, the arrangement of the specimens, and the methods of indexing them are all fully set forth and the text is illustrated with reproductions of the various classifications, index cards, and devices employed. It affords an explanation of what seems to be a very complete and detailed system. E. L.

Psychology of Testimony.—Professor W. A. McKeever, of the Kansas State Agricultural College, has carried out an experimental investigation of the reliability of report, following the lines of the well-known "event-test" of v. Liszt and other German investigators. A class of twenty-five juniors and seniors were made eye-witnesses of, to them, an unexpected drama, in the shape of a realistically enacted "hold-up." Directly afterward, the class was called upon for written testimonies as to the personal appearance and conduct of the three participants in the drama.

[1]Furnished by Mr. E. J. McDermott.

[2]Furnished by Mr. E. J. McDermott.

While no attempt is made to calculate the several co-efficients of report (range, spontaneity, accuracy, assurance, and the like), Professor McKeever states that the correct statements were fewer in number than the incorrect ones, and concludes that, in an actual criminal trial, the testimony would have been most unfair and damaging to one of the enactors, who was entirely unarmed and whose utterances were perfectly inoffensive.[1]

The Scientific Spirit and the Judge.—Under the title of *Studies in* Judical Sociology," Alfredo Andreotti, in the *Rivista di Diritto Penale Sociologia Criminale,* for May, 1910, raises the question as to whether a judge should restrict himself in his sentences to the decision of questions of fact and of law or should apply scientific methods to the treatment of cases which come before him. Signor Andreotti contends that at present judges are not scientific and devote themselves to filling large volumes with doctrinal dissertations, instead of performing their important social functions in accordance with scientific principles. While he does not say so specifically, the implication of his article seems to be that judges should have scientific training.[2]

The Governor of Wisconsin on Court Procedure and Criminology.—The Governor of Wisconsin in his annual message to the legislature (January, 1911) makes the following observations on the subject of reform in judicial procedure:

"The Wisconsin Branch of the American Institute of Criminal Law and Criminology has worked out certain proposed changes in court procedure and present methods of dealing with persons convicted of crime, to which I desire, without special mention of any particular item, to call your attention. There should be greater certainty and stricter impartiality in the administration of the criminal law than we have at present. The malefactor with unlimited resources for defense should be put on a plane with his poorer fellow offender. As quickly as possible, convicts capable of reformation should be converted into useful citizens and society should be better protected against those not susceptible of reformation. The organization having the advocacy of these and other like reforms in charge is composed of disinterested, public-spirited citizens, and I bespeak for their proposals your thoughtful consideration. Some of the suggested modifications in procedure will be found applicable to civil as well as criminal cases. The need of simplification and more prompt results is common to both. But no change in the law which contemplates depriving accused persons of fundamental rights should be lightly or hastily sanctioned."

Co-Operation Between the Bar and Court Officials.—Delay in litigation is frequently due, to an extent not appreciated by the public and, perhaps, not always even by the bar, not so much to the actual work of the courts as to causes connected with the preliminary work of bringing cases before the court for trial. Such matters as the service of writs by the sheriff, the prompt or delayed return of writs, defective returns, the proper handling and indexing of pleadings and other papers filed with the clerks of the courts, the proper entry and indexing of orders and judgments, loss of papers; these and many other similar matters seemingly trivial in themselves are, when taken together, of very considerable

[1]Furnished by Professor Guy M. Whipple.

[2]Furnished by Professor Maurice Parmelee.

importance in regard to promptness or delay in the conduct of litigation. In our centers of population, with the large volume of legal business, the problem of efficient conduct thereof is one of considerable magnitude. The Bar Association of Allegheny County (Pa.) recently appointed a committee to confer with the officials in regard to improving the transaction of business in the various offices, and it presented a report on January 6, 1911. The committee found ready coöperation from the officials consulted and considered and reported upon numerous matters of administration in which improvement seemed possible. Such coöperation between the bar and officials would seem a valuable and desirable method of increasing administrative efficiency. E. L.

Distinction Between Criminals and Defectives.—Warden J. C. Sanders of Fort Madison, Iowa, sends us the following note defining the criminal "as he really is when segregated and closely studied":

"When he is referred to as a 'defective,' a misconception is liable to be created. The general impression made by the word is that of physical deformity. This is not true of him. Yet he is strictly within the meaning of the word broadly understood, for he is incompetent. Mentally and physically the mass of criminals did not start in life handicapped by lesser endowments and ability than the average. In no sense should they be regarded as weaklings. That they have proved to be defective is true, but the cause invariably is traceable to defective training. They never learned to do anything sufficiently well to have a commercial or trade value. With all the desires of more competent men, they lacked the ability to gratify them. The possibility of doing so through violating the law appealed as a certain solution; the transition to outlawry was easy, because it was the logic of the situation. This is the criminal as he is. But one thing should be done for him: train him. Give him the proper moral surroundings and instruct him along practical lines. When properly developed, release him." J. W. G.

Mistaken Lenity to Criminals.—In a recent communication to the Louisville *Courier-Journal* Mr. E. J. McDermott, of the Louisville bar, gives some examples of mistaken lenity in the treatment of criminals.

"At Oakland, Cal., on December 24 last, Mrs. Isabella J. Martin," he says, "was convicted, for the second time, of having used dynamite to blow up and assassinate, in the most villainous manner, Judge Ogden and his innocent family in their home. It appears that she was offended by his decision in an insurance case that she had had before him. She forced 'Baby' John Martin, by threats of death, to set the dynamite and to fire the fuse. He so testified at both of her trials, and both times she was convicted. She claimed that Martin was her son. Here was evidently a degenerate, dangerous woman; and yet the maudlin jury, in their verdict, recommended her to 'the extreme mercy of the court.' Mercy to her means death to some other victim at her hands or at the hands of someone else like her. That a jury should recommend mercy to her shows how deep-seated is the canker from which we are suffering.

"We are told by a late despatch that the Governor of Alabama, 'who likes poetry,' picked up Lord Byron's works and read 'The Prisoner of Chillon.' He apparently had never read Byron before. But, at any rate, this poetical, romantic governor read Byron's poem before he started on his annual tour of the state prison and the convict camp. 'The poem,' we are told, 'so deeply impressed him

that, after visiting the convicts, he exercised wholesale clemency, pardoning 100 long-term prisoners, forty of them convicted of homicide and twenty being life convicts.' The governor said to the reporter: 'I gave the matter careful consideration and I could find no good reason for keeping these men who had served so long and so disastrously to their own health and happiness.'

"Mark how tenderly the governor refers to these murderers 'who had served so long and so disastrously to their health and happiness.' What right has a state to make a murderer serve the state long when the service interferes with his 'health and happiness'? It is true these murderers interfered with the 'health and happiness' of their victims and of the widows and helpless children and the fathers and mothers of the dead; but who bothers about the poor creatures that were only murdered? Have they any votes or influential friends now?

"Bonnivard, the rich and scholarly man who sacrificed all his wealth and his freedom for Geneva and for the liberty of others, who was imprisoned, not for the murder of a fellow man, but for his unselfish effort to help his fellow men —Bonnivard, the noble prisoner of Chillon, gave Byron the theme for his beautiful poem; but that beautiful poem was perverted to base uses when a governor pretended that it led him to turn out at one stroke forty common murderers, not because they were innocent or had not had a fair trial, but because, for the blackest of all crimes, they had served the state long enough and had suffered 'in health and happiness.' Was it ever the intention of God's law or man's law that a red-handed murderer should not suffer 'in health and happiness' when, like Cain, he slays his brother?

"Such flimsy excuses for a selfish or weak-minded disregard of law and morals always tend to encourage crime and make life unsafe for the honest and law-abiding citizen. It is necessary for governors with the pardoning power not only to read poetry, but also to read and digest the Fifth Commandment: 'Thou shalt not kill.' With it goes the corollary: 'Thou shalt not pardon or agonize over the red-handed murderer.' It is mercy enough to spare his life at all, but to shed a maudlin tear over him is to outrage the dead and degrade and weaken the law. Is it any wonder that murder here should flourish as in no other civilized land?"

The Sociological Foundations of Law.—An article under the above title in a recent number of the *Green Bag*, by Professor Charles A. Ellwood, will be of interest to all students of law from a scientific standpoint, and should be to all lawyers. The appearance of such studies is a welcome sign to those who wish to see a science of law take a place in the field of organized investigation by scientific methods. Professor Ellwood recognizes the essential distinction between law and government. "Law," he says, "antedates the state, as we understand that word, and government, so far from being the original source of law, is simply the means of enforcing law." In the last analysis, however, Professor Ellwood falls back upon the force theory as his foundation for law. He regards law as one method of social control or coercion. He says, "law and government are rather coördinate expressions of the tendency of all social groups to regulate the conduct of their members in order to preserve their organization and their existence. . . . Social control is characteristic of all societies whatsoever. Consequently, in human groups, with their self-conscious units, we get conscious and deliberate attempts to control the activities of the individual." Authority in some form and to some extent is present in all societies, it is true,

but the present writer would not follow Professor Ellwood in finding law to be originally a conscious social control. It seems to him that the late James C. Carter is more nearly correct in regarding it as simply the orderly statement of the uniformities which human conduct presents. "It is the form," says Mr. Carter, "in which human conduct—that is, human life—presents itself under the necessary operation of the causes which govern conduct." The activities of human groups are not necessarily "conscious and deliberate." Much of the mental processes of mankind never rise into consciousness at all, and we must regard the social life of man, to quote Dr. Post, "as the precipitate of human psychical existence, and not merely of that part of it which is conscious, but also of that part of it which is unconscious, that which is inaccessible to introspective observation, that which is not thought, but is merely lived."

The conscious element becomes relatively larger in civilized societies and here contract or agreement takes a more important place as a source of law. Professor Ellwood also recognizes the unquestionable distinction between opinion and custom. Public opinion rests mainly on conscious reasoning, while custom is in the main the product of what does not lie in the individual consciousness. This article also admirably points out the truth that law represents social conditions as they are; the actual and not the ideal; and, therefore, is not an appropriate instrument of social reform. One may not, however, unqualifiedly assent to the broad statement that "we are still without a system of law that is adapted to our new and complex civilization." The basic elements of social relations remain the same, otherwise we could not have a science of society; the newness is almost entirely in the details. The general principles of law, therefore, when once ascertained, may be expected to retain their validity, although, of course, changing conditions will call for corollaries to the rules. But there can be no dissent from Professor Ellwood's conclusion that as the work of the application of legal principles to new conditions falls largely to the legal profession, "it is the duty of the legal profession to equip themselves for this function by an extensive knowledge, not only of social conditions, but of the principles which underlie social organization and social change." This suggestive paper cannot be too strongly recommended to the careful attention of all students of law.

E. L.

Criminal Anthropology in Cuba.—Under the title of "Quelques Questiones Pratiques de Criminologie et Assistance Publique et l'Organisation Penitentiaire Internationale," there are reprinted three short papers by Dr. F. F. Falco. The first is "Sur les Applications de l'Anthropologie Criminelle," and has special reference to Cuba. Dr. Falco, after referring to a study of Dr. Martinez Baca, presented to the Chicago Exposition of Criminals among the Indians and Creoles of Mexico, made from the standpoint of ascertaining whether or not the conclusions of the positive school of criminologists would be confirmed by a study of people of a different *milieu* and ethnologic constitution, calls attention to the ethnologic variety of the Cuban population, comprising Creoles (three-fourths of the whole), negroes, Asiatics and the various mixtures of all these. A study of 447 cases shows that the whites contribute more political criminals in proportion to population than the colored races, and the colored more who commit crimes of violence, but that the number of crimes of violence and offenses against modesty is small in proportion to the total criminality in spite of the climate and conditions of nervous irritability more predisposing to

such than in European counties. He concludes that the different political conditions and the manner of development of the social activity of the different ethnologic elements has largely modified their criminality, and sees in this a possible meeting ground between the sociological and anthropological schools of criminology. Dr. Falco disagrees with Lombroso in his wish to except political criminals from the death penalty. He points out that political crimes occur under republican as well as monarchical forms of government, and that they are largely associated with violent epidemics of morbid sentiment in the same manner as are lynchings in some countries. The paper was originally presented to the Amsterdam meeting of the International Congress of Criminal Anthropology. The second paper reprinted deals with the assistance of minors in prisons, and the last reviews the work of the International Prison Congress. In the latter the development of the theories of penology and the origin of the Prison Congress is briefly sketched. Dr. Falco repeats the old fallacy that the sole object of punishment under the law and the theory of the so-called classical school of penologists is to take vengeance on the criminal, but gives an interesting account of the growth of the tendencies now so much in evidence toward study of the individual criminal. The paper was originally published in the "Revue Penitentiare," and the reprint bears the imprint of A. Rey et Cie, Lyons, France.

E. L.

First Universal Races Congress.—A congress of races is to be held in London from July 26 to 29, 1911, in the central building of the University of London. Among the supporters, from upwards of fifty counties, are over twenty-five presidents of parliaments, the majority of the members of the Permanent Court of Arbitration and of the delegates to the Second Hague Conference, twelve British governors and eight British premiers, over forty colonial bishops and many Professors of International Law, Anthropologists and Sociologists. The object of the Congress will be to discuss, in the light of modern knowledge and the modern conscience, the general relations subsisting between the peoples of the West and those of the East, between so-called white and so-called colored peoples, with a view to encouraging between them a fuller understanding, the most friendly feelings and a heartier coöperation. Among the important papers to be presented before the Congress are: "Definition of Race, Tribe and Nation," by Brajendranath Seal, Principal of the Maharajah of Cooch Behar's College, India; "Anthropological View of Race," by Dr. Felix V. Luschan, Professor of Anthropology in the University of Berlin; "Sociological View of Race," by Prof. Alfred Fouilleé, Paris; "The Problem of Race Equality," by G. Spiller, London; "Religion as a Consolidating and Separating Influence," by T. W. Rhys Davids of the University of Manchester; "Differences in Customs and Morals and Their Resistance to Rapid Change," by Dr. Giuseppe Sergi, Professor of Anthropology in the University of Rome; "The Instability of Physical Types," by Dr. Franz Boas, Professor of Anthropology in Columbia University, New York; "Inter-racial Marriage," by M. J. Deniker, Paris; "China," by His Excellency Wu Ting-Fang; "Japan," by His Excellency Sumitaka Haseba, President of the House of Representatives of Japan; "The Role of Russia in bringing together the White and Yellow Races," by Dr. A. Yastchenko, Professor of Law in the University of Dorpat; "The Fundamental Principle of Inter-racial Ethics," by Dr. Felix Adler, New York;

"The Jewish Race," by I. Zangwill; "The World Position of the Negro and Negroid," by Sir Harry Johnston; "The South African Native," by Tengo Jabavu, Kingwilliamstown; "The Negro in America," by W. E. B. DuBois, and "The American Indian," by Dr. Charles A. Eastman. The fee for active membership in the Congress, including attendance and the published volume of proceedings, will be 21s.; passive membership, excluding attendance, but including all publications, may be secured for 7s. 6d. The address of the Secretary, Mr. G. Spiller, is 63 South Hill Park, Hampstead, London. E. L.

American Political Science Association on Judicial Reform.—The American Political Science Association, at its recent annual meeting in St. Louis, devoted one of its sessions to the consideration of some problems of judicial organization and procedure. Addresses were delivered by Chief Justice Olson of the Chicago Municipal Court, Hon. E. J. McDermott of the Louisville bar, Hon. Frederick W. Lehmann, Solicitor-General of the United States, Dean John D. Lawson of the Law School of the University of Missouri, and Mr. E. M. Grossman of the St. Louis bar. Judge Olson spoke of the popular dissatisfaction with the present administration of the criminal law, the delays due to multiplicity of courts and the defects of our methods of procedure, and the need of a more efficient organization of the courts so as to secure greater unity and coördination. He described the organization and procedure of the Municipal Court of Chicago, and showed how it had become one of the most efficient judiciaries in the country. The jurisdiction of the court, he said, ranged from cases where arrests were made for spitting on the sidewalk, to cases of contract involving $6,000,000 in amount. Of the 87,000 criminal and quasi-criminal cases tried last year, he said, 80 per cent were brought to trial within twenty-four hours, and 90 per cent within two weeks. He advocated giving wide administrative powers to the Chief Justices of Municipal Courts and the leaving to the judges themselves the power to prescribe the details of procedure. The judges should also have the power to fix the salaries of clerks and bailiffs. Pleadings should be as simple as possible and should be free from the technicalities of the common law. Motions should be disposed of rapidly and reversals should be made only upon the merits of the case. Since judicial statistics serve as the basis of remedial legislation and indicate results, every Municipal Court should keep a complete record of judicial statistics.[1] Judge Olson's paper was discussed by Mr. Grossman, who described the somewhat disgraceful conditions prevailing in St. Louis, where the "justice shop" still prevails, and where a movement is now on foot to establish a more modern and efficient municipal judiciary. Mr. McDermott read a paper on "Delays and Reversals on Technical Grounds in Criminal Procedure," which we hope to publish in the next number of the JOURNAL. Radical changes in our procedure were necessary, he said, to bring our methods of administering justice up to the standard attained in England. Delays cost much money and many judges pay too much attention to trivial points raised by lawyers.

Among remedies suggested by the speaker were that prosecuting attorneys be given the right to amend indictments, that the press be permitted to publish only actual reports of trials as they progress, without any attempt at expression

[1] A review of the last annual report of the Chicago Municipal Court was published in the November number of the JOURNAL, pp. 655-656.

of opinion; that the reading of newspapers should not make a man ineligible to sit as a juror; that expert testimony be regulated as to number of experts admitted, as well as amount of fees; that a jury should not be "hung" up by any one or two members, and that the same number of peremptory challenges be given both sides.

Mr. Lehmann agreed with everything that Mr. McDermott said in regard to the evils of our present procedure and of the crying need for reform. He called attention to a number of reversals upon ridiculous technicalities in cases which had come under his observation. Some people wonder, he said, why there is not greater respect for the law. The reason is that its administration frequently does not bear the slightest resemblance to common sense. Lawyers are too much tied to the traditions of the past and are opposed to thoroughgoing reform. Dean Lawson described his observations in the English courts during the past summer. He pointed out the facility with which juries are selected, the dispatch with which cases are tried, the unimportance attached to technicalities, and dwelt upon the important part played by the judge in the trial. He related many interesting incidents observed by him, illustrating the various points discussed. J. W. G.

New York State Conference of Magistrates.—While various other classes of public officials are accustomed to hold conferences for the purposes of exchanging ideas and formulating recommendations as to desirable methods of work, the magistrates and judges of police courts in most states seldom, if ever, meet for such purposes. Conferences of this sort have been held, however, in New York and Massachusetts during the past two years at the suggestion of the state probation commissions, and there are now formal organizations of judges in each of these states.

The second New York State Conference of Magistrates was held at Albany on December 10, with an attendance of 40 magistrates, representing 26 cities and 9 villages, and a number of other persons interested in the work of criminal and children's courts. Three sessions were held, and most of the time was given to informal discussion. At the morning session Chief City Magistrate William McAdoo of New York City, First Division, and City Judge J. K. O'Connor of Utica, who opened the discussion on the question of arrests, declared that too many persons are arrested for minor offenses, especially for violations of corporation ordinances, and that in many cases persons charged with slight infractions of the law often could and should be brought to court by a summons, which would not subject them to the indignity and inconvenience of an arrest. Judge McAdoo reported that the summons system, which has been provided for by law in New York City since July 1, is operating successfully, and other speakers testified that in various other parts of the state, where an informal summons has been used without legislative sanction, the system has proved practical and beneficial. Resolutions were adopted recommending that the code of criminal procedure be amended to legalize the summons system throughout the state.

At the afternoon session Judge Robert N. Wilkin of the Brooklyn children's court and Judge Benjamin J. Shove of the Syracuse children's court spoke on the procedure and practice in children's courts; James D. Sullivan, chief of the compulsory attendance division of the State Education Department, advocated better enforcement of the truancy law, especially of the provision authorizing the punishment of delinquent parents, and Dr. William O. Stillman, president of the

American Humane Society, discussed the prosecution of cases of cruelty to children.

The evening session began with a dinner, at which Supreme Court Justice Alfred R. Page, chairman of the recent Page Commission on Inferior Courts, made the principal address. He emphasized the importance of the personality of the judge in the lower courts. Chief City Magistrate Otto Kempner of Brooklyn led a discussion on enforcing the excise law, and Judges Simon A. Nash of the Buffalo Domestic Relations Court, Robert C. Cornell of the Domestic Relations Court of the Boroughs of Manhattan and the Bronx, and Edward J. Dooley of the Brooklyn Domestic Relations Court, spoke on the work of their courts. All three of these courts were started during 1910, and were probably the first courts of the kind in the world.

The conference, through its executive committee, will seek to promote desirable legislation concerning procedure and the treatment of offenders. Resolutions were adopted calling upon the Legislature to make appropriations for the establishment of a state reformatory for male misdemeanants between sixteen and twenty-one years of age, a state farm colony for habitual tramps and vagrants, and special institutions for the care and treatment of confirmed drunkards. The conference also placed on record an expression of opinion that newspapers should refrain from publishing the names and descriptions of children brought before juvenile courts.

The proceedings of the conference will be published by the State Probation Commission. A. W. T.

Proposed State Laboratories for the Study of Abnormal Classes.—Mr. Arthur MacDonald of Washington continues his efforts to induce the National and State governments to establish laboratories for the study of crime, pauperism, alcoholism, degeneracy, and other forms of abnormality. He has recently written letters to the governors of many states urging them to recommend to their Legislatures the establishment of such laboratories. Some of the objects and purposes of such laboratories, as stated by Mr. MacDonald, are:

1. To gain more trustworthy knowledge of social evils. Such knowledge would furnish a basis for modifying defective laws, adapting them to present conditions.

2. To find whether or not there are any physical or mental characteristics that distinguish criminal children from other children. Such knowledge would make it possible to protect children in advance and lessen the chances of contamination.

3. To find whether or not there are any physical and mental characteristics that distinguish habitual from occasional criminals. Such knowledge would enable the community to protect itself in advance from habitual criminals and assist prison officials in preventing them from contaminating other criminals.

4. Exhaustive study of single typical criminals, which represent a large number, will give definite knowledge as to just how men become criminals and to what extent their surroundings influence them as compared with their inward natures. This would make possible a rational application of remedies for these evils.

5. More exact knowledge of the abnormal classes will enable us to manage them better in institutions. Such studies will bring men of better education and

training in control of the institutions, and increase interest in the professional study of these classes.

Merxplas, Belgium's Colony of Vagrants.—Merxplas, Belgium's establishment for the incarceration of all the beggars and vagabonds of the country, is interestingly described by A. F. Van Schelle in an article entitled "A City of Vagabonds," in the *American Journal of Sociology,* for July, 1910. The colony constitutes a little city of its own, with a population of over 5,000 inmates, situated in a wild, uncultivated district in the north of Belgium. The organization of the colony is fundamentally agricultural, but there are also foundries, smithies and workshops for various kinds of labor, so that each man may busy himself at his own line of work. The output is employed mainly for government uses. The population of the colony is a gathering of all the elements that are noxious when set free in the social strata. It includes physical degenerates, persons with mental diseases not serious enough to be always recognized as insane, and with nervous maladies, moral delinquents and petty offenders. Their mental and physical defects render them incapable of gaining a living and predispose them to the commission of crime. While sent to Merxplas merely for vagrancy, the term at the second commitment may be from two to seven years. Mr. Van Schelle thinks that "the population of Merxplas is destined to decrease the number of convicts by eliminating them from society and segregating them in an isolated part of the country, and constitutes a preventive regulation as profitable to the inmates themselves as to the mass of society." E. L.

Prison Reform in Michigan.—A commission has been appointed in Michigan to investigate the subject of prison labor and report to the Legislature upon the advisability of abolishing the present contract system. The members of the commission have lately visited the prisons of a number of Eastern States and will, it is understood, make an early report to the Legislature. The State Board of Prison Industries has also been conducting an investigation into the subject of prison labor, and recommends the abolition of the contract labor system, the establishment of industries on state account, and on the important matter, what those new industries shall be, it recommends that the boards of the individual institutions shall decide.

It further suggests that convict labor be employed in the manufacture of shoes, that each institution raise its own farm products, that illiterate prisoners be educated, that each convict be given a small allowance from his earnings, but it opposes convict road work and convict stone-breaking. Among the most important parts of the report is the discussion of prison competition with legitimate labor, the conclusion being that it is impossible to find an industry which will not compete with free labor.

"The objections to state farms for the convicts," says a local paper, in commenting on the report, "could not apply if the farms were to raise only products used at the prisons. There would be no competition with the legitimate farmers and at the same time the farms would give an excellent although somewhat restricted opportunity of applying the honor system and providing healthy outdoor work for some of the more amenable of the convicts. The suggestion that illiterate prisoners be educated is excellent enough in theory, although it will prove difficult to carry out. The suggestion that each convict be allowed a portion of his earnings is excellent, the system to be made cumulative, perhaps,

so that the prisoner would have a small sum of money on which to start when released from prison, or the money to be paid to those naturally dependent on him."

"In view of the apparently enthusiastic report on the success of the convict road system in Colorado," the same paper continues, "which was informally made on the return of Governor Warner from his investigations in that state a short time ago, the opposition to the system here comes as a surprise. If it proved so successful in Colorado it is difficult to see why it could not be carried out to advantage here. The difficult task of shaping the course of prison work at one of the most important periods in the history of Michigan penological institutions is now up to the Legislature and the incoming administration. It is a gigantic task, but there is every reason to believe that it will be dealt with wisely." J. W. G.

The Eastern Penitentiary of Pennsylvania.—Joshua L. Baily, president of the Pennsylvania Prison Society, has contributed an article to a recent number of the *Journal of Prison Discipline and Philanthropy* describing his observations during the course of a visit to the Eastern Penitentiary of Pennsylvania. He found that at the opening of the year there were confined in the institution 1,525 convicts, of whom 1,178 were white and 347 were colored. Of these, 38 were women. Of the 566 convicts committed during the past year, 352 were under thirty years of age.

"As there are now only 710 cells, it is necessary," he says, "to place at least two, and in some instances three, in a cell, thus doing violence to what we know as the Pennsylvania system of prison discipline, a fundamental provision of which is embodied in the compound word convict-separation.

"A new block of 120 cells, now in course of construction and approaching completion, will increase the whole number of cells to 820, but, notwithstanding this increase, it will still be necessary to place two convicts in each cell. The law of Pennsylvania limits to 35 per cent of the whole number of convicts those who may be employed in any of the trades; as a consequence the greater number of them are consigned to enforced idleness. No punishment could be more severe, and if punishment is the chief object of our penal system, it is certainly secured by Pennsylvania law. It is a system, however, which belongs to an age long since past, when the reformation of the criminal had little or no consideration. This law of enforced idleness is not only cruel and inhuman, as to the convict; it is improvident as to the state; for the convict, if employed, could not only pay the entire cost of his maintenance, and thus relieve the state of this burden, but he would be able to lift another and greater burden which must rest somewhere, the support of his family during his imprisonment. Under the present system the guilty convict is not the chief sufferer. The severity of the punishment falls heaviest upon his family—the innocent wife and children.

"Instead of permitting the convict to earn his maintenance by his own labor, a fellow-laborer outside the prison walls is taxed to support him in idleness, an idleness which only intensifies whatever criminal propensities he possesses, instead of curing them, and increases his capacity for depredations upon society when the prison doors are open to him. In other words, for every man in the Eastern Penitentiary who does not earn his maintenance, some man outside has to earn it for him."

Notwithstanding the limitations of the law in regard to convict labor, the

warden is doing what he can to provide employment for convicts who would otherwise be idle, by employing them as domestic servants, bakers, cleaners, gardeners, etc. The hospital, we are told, has been renovated and otherwise improved and the bakery remodeled and equipped.

"In addition to these occupations, a number of convicts have been allowed to make jewel boxes and a few other fancy articles, the materials for which have been purchased for them by the warden—articles which give evidence of much skill and ingenuity and for which ready sale is found among visitors and friends outside, and the proceeds of which have gone to the fund for the relief of their families.

"The capacity of those convicts who have been provided with employment and their readiness to work is shown in this, that from the sources above referred to and from work overtime in the shops they earned last year over $12,000, the major portion of which was sent to their families. The unused earnings of the convicts from overwork, and which have accumulated from year to year, and which are now on deposit in a savings bank to individual credit of convicts, was, at the close of last year, $11,644.96. This is an evidence of what would be the likely result were all the now idle convicts furnished with steady employment. In my opinion an earnest effort should be made to secure from the Legislature the repeal of all legislation which limits the trade employment of the penitentiary convicts. This repeal would not only be in the interest of the convicts, but in the interest of the state. Not only would the Eastern Penitentiary become self-supporting, but the convict would be able to provide for his family. But not from a financial point of view would be the greatest gain—the greatest gain would be in the improvement of the convict morally, mentally and physically, and tenfold greater would be the chances. in many cases, of his return to freedom an industrious and well-doing citizen."

Of the 519 convicts who were discharged in 1909, 447 were released under the provisions of the commutation law. This law, together with the recently enacted parole law, has revolutionized the penal system of Pennsylvania. Four hundred and thirteen of the prisoners discharged were provided with new suits of clothing by the Pennsylvania Prison Society.

"The tabulated statistics of the penitentiary for last year (1909) show that of the 566 convicts received only 156 had any trade. That is, 410 of them had *no trade* and 88 were idle at the time of arrest. Think for a moment of the exceptionable opportunity here presented to instruct there 410 men in some trade by which they could earn a livelihood for themselves, and for those dependent upon them—to change 410 men, most of whom were probably consumers only, into 410 men who would be producers also." J. W. G.

Proposed Colony for Inebriates in New York City.—A movement has been started in New York City looking toward a change in the existing method of dealing with drunkards. The proposal is to establish a hospital and industrial colony for inebriates, such as are found in Massachusetts and Iowa, and which have long existed in England. At present drunkards are sent to a gloomy building known as the workhouse, located on Blackwell's Island, where they do not work, but serve their time in idleness. "Thither every year," we are told. "are sent some 25,000 persons arrested for drunkenness in the boroughs of Manhattan and the Bronx alone. Some are men who are not habitual offenders, some are unfortunates who keep sober some months and then give way to an unbearable

longing for liquor; some are confirmed, regular drunkards, but honest and quite free from criminal taint, and a certain proportion is made up of the dregs of civilization, which seem apparently worthless.

"The first offenders are discharged, together with many of the second class; the remainder are packed off to the island, there to be herded together and treated as if they were all on the same level. That has been the system up to the present in New York and in the great majority of American cities. It is a useless round of expense and trouble that takes nobody anywhere."

"Everybody agrees," said Judge Julius M. Mayer, who served as counsel to the Page commission, "that the present manner of treating inebriates leads nowhere. We do not attempt to cure such as might be cured. We simply lock them up under conditions that are extremely bad for a man with shattered nerves, and then we let them out again, made rather more liable than before to take to the nearest saloon. Some men are being practically supported by the city in this way.

"The purpose of this law is to treat inebriates as sick men, making the whole proceeding as nearly as possible like the proceedings in lunacy. The relatives of a confirmed drunkard may apply, like the relatives of a lunatic, for the commitment of the man, and, after proper examination, he will be sent to the colony, where he will have the best medical care and a chance to make a man of himself if it is left in him. Persons who take drugs are included in the provisions of the law."

Another advocate of the proposed colony is Bailey B. Burritt, assistant secretary of the Charities Aid Association. Mr. Burritt has prepared a series of charts showing the results of the present system.

"The studies made of several cases of 'repeaters' will illustrate. Half of the 25,000 arrests for drunkenness are discharged. Of the remaining half, one-seventh is made up of 'repeaters.' In 1909 forty persons had been committed four or more times during the year, and twenty-four of these chronic 'repeaters' were studied. It was found that the total cost of maintenance in city institutions for these persons during the preceding five years had been over $6,000. This does not include the expense of arrest and commitment—only the actual cost of supporting them when they were sentenced.

"One case, which is not worse than many others, shows a record since 1889. At first the arrests were one or two a year, and the sentences ran from four to thirty days. Then things got worse. The man would be released one day, and the next he would be back again. In 1895 he was arrested seven times. By 1901 he was getting sentences of six months in the workhouse and rarely spending more than a few days at liberty. The year of 1909 was spent almost altogether in the workhouse. He is there now. He will come out—and go back. This edifying process will be repeated until he falls into the gutter some day, never to get up again. Life is torture for him, and he is no more able to care for himself than the veriest lunatic that raves. Consider what must happen to a man with the abnormality of the nervous system that drunkards are born with or at any rate acquire by constant drinking. After a prolonged spree there is arrest and confinement. The process of coming back to the world is carried on in a dark cell. Sometimes as many as eight men sleep in one cell with a small window. The drunkard is shaken in every nerve. He needs fresh air, exercise, good food and regular employment. He needs them just as much or more than any nervous wreck in a sanatorium. And, above all, if he has any manhood left, he needs

encouragement and good companionship. What he gets is the dark stuffiness of his cell, the talk of men who have fallen too low to concern themselves with any thought of rising, little or no exercise, no work, and a quantity of bread and coffee. He serves his sentence, gets out, and, in the natural course of events, being worse, physically, than when he went in, goes to the nearest saloon for a 'bracer.'"

"We do not say," said Mr. Burritt, "that even the majority of cases of habitual drunkenness may be cured. We do say, however, that many men who are headed straight toward chronic drunkenness may be saved if taken in time and given the medical attention that they need.

"As for the cases that cannot be cured, we can see to it that they are treated well and given a chance to support themselves as far as they can. I believe the per capita cost at the workhouse is about 60 cents a day. At the Craig Colony for Epileptics, run on much the same lines as the proposed colony for inebriates, the cost is but 40 cents a day, and the epileptics are not able to do as much work as the inebriates would probably do.

"It has been found that about 16 per cent of chronic inebriates are insane. Whether they are insane because they drink, or drink becaues they are insane, is, I believe, disputed. They are probably born with some abnormality that might never have marked them from the everyday person except that it made them crave excitement of some kind. Then the drinking reacted on the nervous system, which in turn sent them back to drink, and, finally, there is no question but that they are demented.

"We would hope, if we got the colony, to divide it so that the different kinds of cases would not be brought too closely together. A young man who is probably curable should not have before him constantly the spectacle of failure. Bad cases should be kept from the more promising ones. Some would be largely hospital cases, some would need little of the hospital and much of the farm.

"There should be a change from the very beginning in the treatment of drunkards. For instance, half of the arrests are discharged. Under present conditions that is a very natural thing for the magistrate to do—he knows that sending them to the island is not going to help matters, and he chooses what seems to him the lesser of two evils.

"That is all right, but it shows how illogical our system is. A man cannot be arrested on suspicion of intoxication. It is not like theft, which has to be proved. The proof is there, and if drunkenness deserves arrest it deserves something besides dismissal.

"Undoubtedly the police arrest more men than they should for intoxication. They need education along these lines. But if a man is justly arrested we must do something about it. When the magistrate imposes a fine he is asking money from a man who is almost certain to be penniless, and it is about the same as sending him to the island—in the great majority of cases he cannot pay. And if the fine is paid it is generally his relatives who give the money.

"Now we hope that the police will learn when to arrest and when not to, that the industrial colony will be able to settle the problem the magistrate has to face, and that when a fine is imposed it will not be demanded at once, but will be paid to a probation officer at stated intervals. We would hope to use the probation system quite extensively in the case of inebriates. As to the hopeless cases, the experience of Massachusetts led to the proposal that such cases should be

committed on an indeterminate sentence. The man would at least be well taken care of and he would not be altogether a burden on the community.

"The Massachusetts institution was opened in 1893, and the Iowa Legislature voted for a similar institution in 1904. Minnesota decided to follow suit two years ago, and the institution is now being erected. In Pennsylvania the Legislature passed a bill of the same sort, but the Governor vetoed it because of a lack of money. New Jersey, Connecticut, and Michigan are all studying the problem. In England, of course, they have been going about the matter in a systematic way for many years." J. W. G.

The New World and Crime.—In an address before the International Prison Congress at Washington Sir Evelyn Ruggles-Brise contrasted European and American ideas and practices in regard to the treatment of crime. He referred to the large "fund of humanity and benevolence" that was being applied in the United States at the present time to the rehabilitation of the offender and the remarkable hopefulness of the American in rehabilitation as the object to be attained.[1] The monsters which we are trying to destroy in our respective countries, he said, are bad prisons, bad laws, and bad criminal procedure.

While Europe has adhered too closely to what is known as the classical school in its attitude toward the criminal, America has broken away too much from tradition. There is a balance between the two which should be preserved, and it is the common recognition by all countries of the purpose and meaning of punishment. "Is America," he asked, "prepared to accept the old fashioned European formula that punishment shall be retributory, deterrent and reformatory, in the order stated?—not retributory in the vulgar and exploded sense of vengeance, but the determination of the human consciousness that the system of rights and wrongs shall be maintained, that he who offends against it shall be punished, and that the punishment shall be of such a nature as to deter him and others from anti-social acts.

"By reformatory, I mean the accepted axiom of modern penology that a prisoner has reversionary rights of humanity, and that these must be respected consistently with the due execution of the law, and that no effort must be spared to restore that man to society as a better and a wiser man, and a good citizen. Among loose thinkers and loose writers the impression seems to be gaining ground that this historic order of the factors of punishment should be inverted and that the object of punishment shall be altogether reformatory, as little as possible deterrent, and not at all retributory. It is only by preserving this balance that we can hope to follow the wise advice given to us by the President of the United States, that we must try to steer a middle course between 'maudlin sentiment on one side and a desire for vengeance (that is, cruel, unnecessary and unprofitable punishment) on the other.'

"This question of preserving a common balance is my first reflection. My second is with regard to the indeterminate sentence and the parole law. Can

[1] In his address Sir Evelyn commended to the notice of his auditors the first number of the JOURNAL OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY, in which the balance to be observed in the three factors of punishment is prescribed by Prof. T. H. Green of Oxford University. He regarded it as "a happy augury that the New World and the Old will be in agreement on this point," that the first number of this review should be prefaced by an extract from the writings of "one of the clearest and profoundest thinkers of the end of the last century."

we agree as to the rôle to be played in the future by the judicial and executive authority, respectively? Can the wisdom and discretion of our judges be respected consistently with the intervention of non-judicial authority in the determination of penalty Here is a great battle-ground for the future, and it may be that Europe is not prepared to go as far as America in this respect. My third reflection is, will America be prepared to adopt the same tests as European countries as to the success or failure of any new plan that may be proposed for the treatment of crime? In other words, will America be willing to have her institutions tested by full and accurate and annual statistical data of convictions and re-convictions, as they are tested in Europe and as public opinion insists that they shall be tested?

"My fourth reflection is, whether, in order that there may be a complete comparison of rival systems for dealing with crime, it is possible, or likely, that America will follow the lead of Europe and adopt the principle that the state, as supreme authority, shall be responsible for the treatment of crime in all its manifestations; that is, petty as well as serious crime. In England, our problem is more with petty than with serious offences; with the hundreds of thousands who flock to the local prisons over and over again for perhaps trivial breaches of the law and under short sentences. It is on this problem that today our Secretary of State, Mr. Churchill, is bringing the vigor and humanity and ability with which he is so richly endowed to bear. The solution is to be found in classification and in differentiation; not in using the rusty instrument of imprisonment for short periods as the panacea for all and every kind of disorder or anti-social conduct; but to classify, by groups, vagrants, drunkards, defectives, and to provide special institutions for special categories of offenders. Can America help us to solve this problem? Not, I think, until you recognize that the petty offender or the prisoner awaiting trial is as much a matter for state concern and control as the man under long or indeterminate sentence, upon whom you are now expending so much thought and labor and expense in your state prisons and state reformatories.

"And, lastly, there is, I think, one common principle from which we can all start forward today in our campaign throughout the world; that is, the common belief in what is known—to borrow a French phrase—as 'the individualization of punishment.' By that I mean that each man convicted of crime is to be regarded as an individual, as a separate entity or morality, who by the application of influences or discipline, labor, education, moral and religious, backed up on discharge by a well-organized system of patronage, is capable of reinstatement in civic life. In other words, there is no 'criminal type.' Nothing in the past has so much retarded progress as the conviction, deeply rooted and widespread, that the criminal is a class by himself, different from all other classes, with an innate tendency to crime, of which certain peculiarities in the configuration of his body are the outward and visible sign. This superstition, for such I think it must be called, was, as you know, strengthened and encouraged by the findings of the Italian school. It is not based upon disinterested and exact investigation, and not only has the progress of the science of criminal anthropology been retarded by this conception, but it accounts for the unfavorable and skeptical attitude which we still find in many places towards any attempt to reclaim the criminal. It is my own belief that the assumed co-relation between the mental and physical characteristics of a man is a superstition and a fallacy. I do not believe that a

murderer can be revealed by his frontal curve, or a thief by his bulging forehead or the shape of his nose.

"In England we have been at great pains, during the last two or three years, by scientific and exact investigation to disprove the popular conception of the criminal. We have personally examined 3,000 of our worst convicts, men sentenced to penal servitude and guilty of every form of crime. With regard to each we have collected and tabulated no less than ninety-six statements, that is, measurements, family, history, mental and bodily characteristics, etc. The tabulation is now proceeding at the biometric laboratory of University College, London, under the direction of Dr. Carl Pearson. The results will be published shortly, and we are only able to say at present that so far no evidence whatever has emerged from this investigation confirming the existence of criminal types, such as Lombroso and his disciples have asserted. And, in fact, both with regard to measurements and the presence of physical anomalies in criminals, these statistics present a startling conformity with similar statistics of the law-abiding classes. The results of this investigation will be what perhaps most of us would have anticipated, but as scientific data they will serve to break down the vulgar superstition or tradition that criminals are a special type, and as such in many cases beyond the reach of reform.

"This will encourage us in our work toward the individualization of punishment. It strengthens the common principle on which we are all working; it gives us faith and hope; and of all the prison systems of the world, that will be the best where the arrangements admit of the greatest individual attention being given to each individual case."[1] J. W. G.

Treatment of Juvenile Offenders in Mississippi.—Hon. Frank Johnston, formerly Attorney-General of Mississippi, in an article published in a local paper, protests against the practice in Mississippi of sending juvenile offenders to the state prison and pleads for the establishment of a reformatory in the state.

"There are now in this state," he says, "three modes of punishing youthful criminals or offenders, being the same as for adults, viz: First, fines and commitment to the county jail or county convict farms, either one or both of these modes of punishment; second, a term of imprisonment in the state penitentiary. I have no statistics showing the number of juvenile offenders who are in the county jails, or on the county convict farms, but I entertain no doubt of the fact that numbers of this class of offenders are herded with old and hardened offenders in the jails of the state and on the county farms. But I have the statistics taken from the official records of the state prison showing how this class of offenders are being treated in the state penitentiary. These figures are taken from the last printed official report, which shows the roster of the convicts, and this shows eighty boys in the state prison who were sentenced under the age of eighteen years. Those eighteen years of age and under twenty-one are not included. If they were included, it would greatly swell the list.

"The ages of these eighty boys range from, and including those of seventeen years, down to several as young as twelve years of age! Of these, nine are under sentence for life, three of them were sentenced at the age of fifteen years, and four of them at the age of sixteen years. There are also eight girls in the state prison who were eighteen years and under at the time of their sentences.

[1] This address is published in full in the *Survey*, for November 5, last.

There is one girl of nine years of age under a ten years' sentence, another of fourteen years of age sentenced for ten years, and one fifteen years old under a ten-year sentence.

"The average term of imprisonment for boys, excluding the life sentences, is 4.40 years. And the average term of their imprisonment, including the life sentences, which are based on the mortuary tables of the expectation of life, is 7.04 years. The average term of imprisonment of the girls is 8.01 years, excluding one life sentence. While their average term of imprisonment, including a life sentence for one of them, is 10.3 years.

"There is another consideration that marks with a still greater contrast in the comparison between the extraordinary severity of these punishments and the sentences imposed in the prisons of certain northern states, and that is, the latter are filled with professional criminals, while in Mississippi there is no criminal class as understood by criminologists. We have, as a general rule, what are termed occasional or first offenders.

"There is no conceivable reason why these young offenders should have longer sentences inflicted upon them than are given to the adult, hardened, and professional criminals in the prisons of other states. There can be no reason, founded upon the principles of humanity, or Christianity, or the modern methods of criminology, why these youthful offenders should be sent to the state penitentiary at all. The boys are put in degrading stripes and herded with the adult criminals. I do not know what the prison officials are doing towards their reformation, but I do know that the law takes no account of them.

"It seems strange, if not incomprehensible, to any person who has given the subject at least intelligent study, why it should be necessary to advance an argument in favor of this reform in the criminal laws of the state. It is not an experiment, it is not an idealization or sociological theory; it is a fact, a cold, invincible, undeniable fact, that the old inhuman system of punishment was a relic of barbarism, when punishments were based on a retaliative theory, when the whole purpose of the law, and the efforts of the jailer, were to wreak a bloody vengeance upon the offenders. It violated every principle of Christianity, not to speak of the fundamental principles of humanity, and the enlightened theories and conceptions of modern criminology.

"A juvenile reformatory in this state would put the taxpayers to no expense for its maintenance and support. Enough money could be taken from the earnings of the convicts for establishing it and equipping it in all necessary details. Since the state convict leasing was abolished the convict labor has yielded net in money and in extensive improvements on the penitentiary properties very nearly, if not quite, two millions of dollars. To these profits these boys have contributed their full share of labor for the state's account. So that even the sordid objection of economy cannot be raised in opposition to this reform.

"Now that the state has abolished the old state convict lease system, and the no less barbarous and infamous county convict lease system, the Legislature should continue the work of prison reform, and should, as the next measure of reform, establish a juvenile reformatory." J. W. G.

Discrimination Against Negro Criminals in Arkansas.—The Fort Smith (Ark.) *Times-Record,* for January 3, publishes a letter from P. L. Dorman charging that in the administration of the criminal law of that state the negro race is grievously discriminated against. Among other things, the writer says:

"I have just finished reading the biennial report of the superintendent of the

Arkansas Penitentiary. The report furnishes food for reflection. Of the 902 convicts, only 231 were white; 635 were negro men and 37 were negro women. All the women negroes, mark you, and not one white woman. Strange 75 per cent of the total penal colony of the state are negroes, with a fair sprinkling of women, notwithstanding the negroes are far in the minority in population. Now, watch the statistician get busy with his figures, compiled from such reports as the above, and prove the depravity and criminality of the negro. Yet one has to read 'between the lines' to get a proper estimate of the actual facts. When it is published that there are thirty-seven negro women and not one white woman in the penitentiary, stop a moment and reflect. 'There is a reason.' It is a well-known fact that white women are convicted for every crime in the category, receive penitentiary sentences, but are pardoned forthwith. It has been the boast of one Governor that no white woman should be incarcerated within the walls while he was in the office. How well he has kept his word is shown in the above figures. Here in Sebastian County white women have been convicted for all grades of crime, but none wore the penitentiary garb; they have been pardoned with such frequency as to excite the disgust of even the white daily papers and the court itself.

"It is a well-known fact that negro men are taken before the courts and receive severe penalties for what would be misdemeanors ordinarily. In our county here, which more nearly approaches fairness than possibly any other in the state, we have seen white and colored men indicted for the same grade of crime, but the negro got double the sentence; for instance, an old, ignorant negro attempted to utter forged papers and he received eight years; a white man forged a check, succeeded in cashing it, got four years, and was finally pardoned because it was shown he was suffering with a temporary aberration of the mind.

"Again, a reform school is maintained for the white criminals of the state, from the age of eighteen years and under, where they are taught useful trades and educated and are molded into good and useful citizens. No such provisions are made for the negro. For the least infraction of the law they are haled before the court, often at the tender age of twelve years, and are forthwith incarcerated with murderers and burglars, etc., and are trained for a life of crime. In other words, our system has only one idea for the unfortunate, and that is to make profit out of his labor, which is economically and morally wrong. Punishment should be administered for correction and not profit to the state.

"It is generally known that farmers are the most law-abiding of all classes, and yet they are found in greater numbers in the penitentiary than any other class, 331. Then the counties that sent up the greatest number were from the densely negro populated, whose occupation is farming. This explains much. We all know the pernicious contract system in use on these farms. The average negro tenant is no better than a peon and there is a standing invitation for him to break in jail."

The *Times-Record,* in commenting on the letter, says: "We thought it ought to be read by the white people of the county, but doubted both our own courage to present it to them and the sense of justice of those who might read it. . . . We feel sure the white people of Sebastian County will read it with a sense of justice if not of sympathy."

The Convict Leasing System in Arkansas.—Governor Donaghey of Arkansas, in his recent message to the legislature, strongly criticizes the convict lease system in force in that state, and recommends that the system be

abolished, and that all convicts not needed on the state farm be employed on the public roads. Convicts when leased to contractors are not treated as criminals should be, he says, and an investigation will show that a large majority of those who have died during the past two years are those who have been hired out to contractors. "Escapes are also made from the camps in about the same ratio as deaths occur, since they are not adequately guarded under the lease system. The convict lease system is not only a crime against downfallen humanity, but as a business proposition it is a failure." The state has a convict farm of 2,700 acres, purchased in 1909, on which 300 convicts, or about one-third of the total, are employed. During the past two years the profits from convict labor on this farm have exceeded more than one-half the total revenue derived from all convict labor in the state. "In other words, the 300 convicts on this farm are not only supporting themselves and turning into the state treasury a large surplus, but are in addition supporting 150 other convicts who are leased to contractors."

"Our policy," he says, "should not be one practiced by uncivilized people, nor one in which inhuman treatment by irresponsible parties can be employed. If we are going into the slave traffic with our victims bound in chains and guarded by guns, just for the money there is in it, let us so arrange it that we will reap the reward. As it stands the state commits the crime and does not get the profit. We can lease the convicts to responsible contractors with a better system and a bond for their protection, and receive for that lease not less than $125,000 per year. Better still, we can work all of them for the state on its farm and rented land until enough land may be cleared on the farm to turn $125,000 annually into the treasury and save the lives of at least two out of four of the convicts that are now being buried from contractors' camps or buried soon after they are removed from them, with disease contracted at the camps."

J. W. G.

Crime in Alabama.—The biennial report of the Attorney-General of Alabama, covering the years 1908-1910, shows a shocking amount of crime in that state. During this period 630 cases of homicide were disposed of, convictions having been obtained for murder in the first degree in 121 cases, 153 for murder in the second degree, 100 for manslaughter in the first degree, and 18 for manslaughter in the second degree, making a total of 62½ per cent of convictions in all cases tried. Seventy-seven per cent of the convicts for homicide were negroes, though the white and black populations are nearly equal. The death penalty was inflicted in 27 cases.

The following table gives the number of cases of homicide disposed of during the past 18 years:

For 2 years ending Sept. 30,	1894	306
" " " " " "	1896	377
" " " " " "	1898	402
" " " " " "	1900	394
" " " " " "	1902	491
" " " " " "	1904	338
" " " " " "	1906	669
" " " " " "	1908	657
" " " " " "	1910	630
Total		4,264

These statistics present a marked contrast with the crime record of England, where, during the year 1909, there were but 23 convictions for murder, and the convictions constituted a large percentage of the cases tried. In London, with a population nearly three times as great as that of the whole state of Alabama, there were, according to the report of the Howard Association, summarized in the last number of this journal, but 19 cases of murder, and during the year preceding but 12 cases.

"Of the total number of 20,066 criminal cases reported," says the attorney-general of Alabama, "7,682 were not tried, being either dismissed, abated or withdrawn. Adding to this number the 2,891 acquittals, it will be noted that 10.573 prosecutions were instituted and for some reason, except in a few cases abated by death, the testimony was not sufficient to convict. It is manifest from the astonishing number of cases which did not come to trial during this period, representing 38 per cent of the total number of reported cases, that the practice of instituting frivolous prosecutions in misdemeanor cases is a growing evil. When the people of Alabama realize that in the administration of the state's criminal laws, during a period of two years, four cases out of every ten are dismissed without trial, all intelligent and thoughtful citizens should unite in a combined effort to find some remedy to correct this condition."

An investigation of 236 cases of homicide showed that in 97 cases the defendant or the deceased was drunk or was drinking at the time of the homicide. Applying this percentage to the total, it appears that intoxicating liquor caused or contributed to the killing of 258 men.

"In addition to the increase in the number of homicides due to the use of intoxicating liquors by a population almost equally divided between whites and negroes," says the attorney-general, "in a climate which aggravates the effect of such use, I would say that there may be assigned as further reasons contributing to the unfortunate and deplorable homicide record of Alabama, first, a general prolific source of crime among the negro population; second, the natural conflict or friction growing out of business and other necessary relations between two races essentially dissimilar in characteristics and widely separated in social life, and, third, the racial characteristic of the Southern man to resent quickly an insult and to act upon slight provocation, especially in matters involving personal honor.

"In several of the large cities of the state the violations of the prohibition laws and the many unlawful conditions under which intoxicating liquors are sold has become intolerable. Whether this condition is due to a stolid and indifferent public sentiment, to the inactivity of public officials, or to other reasons, as a sequence, the spirit of law enforcement has suffered and the spirit of law defiance has grown."

The attorney-general recommends that the law requiring solicitors to make reports of all cases disposed of by them be amended so as to make it the duty of the clerks of criminal courts to make reports of all criminal cases disposed of by their courts, to the end that more accurate and complete criminal statistics may be secured. The attorney-general also complains of the large number of reversals by the Supreme Court of cases appealed. During the past two years 286 cases of a criminal and quasi-criminal character were taken to the Supreme Court, and of these 162 were affirmed or dismissed, and 124, or 43 per cent of the total, were reversed. Since 1894, he says, the doctrine of harmless error has been somewhat relaxed by the Supreme Court, but the law prohibit-

ing reversals in such cases has not been strictly complied with. The law, he thinks, should be amended so as to read as follows:

"The judgment of conviction must not be reversed because of error in the record unless the court is satisfied that injury resulted therefrom to the defendant." This change would require the court to say affirmatively that injury resulted to the defendant, whereas, under the present statute the court must be satisfied that "no injury resulted therefrom to the defendant," a conclusion difficult to reach. J. W. G.

Recent Literature on the Psychology of Testimony.—In a recent number of the *Psychological Bulletin* Prof. Guy Montrose Whipple of Cornell University reviews the recent contributions to the literature dealing with the psychology of testimony. The most extensive contribution since the appearance of Stern's work several years ago is that of Breukink (*Ueber die Erziehbarkeit der Aussage, Zeitschrift für Angew. Psychol.*, 1909, 32-87). The following are his most important conclusions from a large number of observations:

"(1) Persons of culture (physicians, professors, teachers) give more extended and more accurate reports than do relatively untutored observers (nurses, workingmen, etc.). (2) Men students report slightly more items than do women students, but with less accuracy, particularly when colors are concerned. (3) Practice in reporting increases the reliability of reports, the improvement being especially noticeable in the depositions and in the answers to suggestive questions. (4) Men offer greater resistance to suggestive questions than do women, but this sex difference is but one-third as great as is the difference between the cultured and the uncultured group. Similarly, there is but little sex difference in the reliability of statements made under oath, but members of the uncultured group took oath to suggestive questions three times as readily as did members of the cultured group. (5) The use of written instead of oral reports apparently tends to increase the number of indefinite answers, but to decrease the number of erroneous answers."

Minor contributions have recently been made by Buchholz (*Zeugenaussagen, Gross' Archiv*, 1909, 128-129), and by Schneickert (*Die Erziehung des Polizeibeamten Zur Treueren Wahrnehmung, Gross' Archiv*, 1909, 94-96), the latter of whom makes a plea for instruction for the German police.

"As regards the application of the method to the detection of information," says Professor Whipple, "it will be recalled that, in 1909, accounts of experiments in this field were published by Yerkes and Berry and by Henke and Eddy. These experiments have recently been reviewed and criticized by Binet; whose comments appear to have been anticipated, in part at least, by the more careful qualitative and quantitative study of the method by Leach and Washburn. The general arrangement of the experiment has been similar in all three of these investigations: the subject is allowed privately to open one of two boxes, each of which contains some single object (a watch, a snake, an ink-stand, etc.), and the experimenter endeavors, by means of a prepared list of some 100 terms to which the subject responds as in a regular association test, to determine which box has been opened.

"The outcome of these more refined laboratory tests does not necessarily guarantee that mental diagnosis by the association reaction method will be of positive service to the jurist, for he will seldom find his conditions so simple and clean-cut as those of the alternative box test. This opinion is confirmed in

particular by Ritterhaus, who declares most emphatically that the method is 'absolutely unfit' for use in criminal procedure. His experiments lead him to assert (1) that a considerable number of persons, especially of women, are so constituted psychically, whether by nature of by circumstances that influence them temporarily, as to render it impossible to apply the method to them successfully, and (2) that, even in the case of those whose mental disposition permits the use of the method, the results, whatever they may be, can never serve unequivocally as bases for legal action." J. W. G.

Administration of the Criminal Law in Philadelphia Criticised.—Mr. Scott Nearing, Assistant Professor of Economics in the University of Pennsylvania, has published an article in the Philadelphia *North American* (January 5), giving the results of his three weeks' observations as a juror in a Philadelphia court. Professor Nearing criticizes severely the administration of the criminal law as he saw it, and says he left the panel with his faith in the criminal courts "utterly destroyed."

"I saw foreigners come into court," he says, "dazed and terrified, unrepresented by counsel, badly understood through an inefficient interpreter, sentenced to months and years in the county prison. I saw political power and wealth, fur coat on arm and hat in hand, bowed respectfully in and out of the court, and even in and out of the prisoners' docks, though the members of the jury panel were subject to the petty insolence of the court officials. I saw occasional cases of political chicanery, considerable legal juggling, hunger, misery, vice and wretchedness rampant. But reform for the prisoners or opportunity for the wretched I saw nowhere. If the criminal law aims to punish prisoners, it succeeds admirably. If it aims to reform them, it is a miserable fiasco.

"The judge sat on a high seat, far removed from the file of wretched human wreckage that passed daily through the prisoners' dock. The district attorney sought conviction, without relation to the background of the crime. The court officials pushed and browbeat the prisoners and witnesses without the vestige of an idea as to what it all meant to society, to the prisoners and to them. The court is a great mill, of which the upper stone is prejudice and the lower stone rigor. Between this upper and this nether stone the wretched poor are ground to powder.

"I said that I left the court without faith in criminal courts or in criminal procedure. Three things that came under my observation gave me this viewpoint. In the first place, property is a god in criminal jurisprudence. Men and women, while not quite devils, at least partake of the nature of imps. Second, a prisoner without counsel was almost sure to be sentenced, while a prisoner with counsel was almost sure to escape. And, third, a man who has once been in the clutches of the law is ever after dealt with as a felon. For him reform is almost impossible. Let me explain each of these points in a little detail. For entering a woman's kitchen and stealing $2.81, a man was sentenced to three years. A burglar stole some shoes and was sentenced for three years. Another man went off with a box of beef extract and was sentenced to three years and six months. Still another man stole twenty feet of lead pipe and got three years. All of these offenses were offenses against property. Note the sharp contrast between the sentences imposed here and the sentences meted out to those who had destroyed or attempted to destroy the image of God in their fellowmen: A man kicked and beat his wife and received three months. A

'cadet' lived for eight months on the earnings of a prostitute and received a six months' sentence. For stabbing a man in the neck, a wound which occasioned a month's hospital treatment, two years. Assault without provocation and fracturing a skull with a brick, three years. Killing a man in hot blood (second degree murder), minimum, five years.

"These sentences, in view of the social importance of the crimes, are much less severe than the sentences on those who had destroyed property. Therefore, I say offenses against property are punished rigorously. Offenses against the person are well-nigh overlooked. Property under the law is all in all; man is a circumstance. This difference is more particularly emphasized in the trials themselves. The men and women who come into the prison court have been unable for most part to secure bail. They are half starved, ragged, abject. Those among them who cannot afford an attorney are usually convicted unless they plead guilty. The district attorney paints them in colors of the darkest hue; circumstantial evidence is adduced from the officer who made the arrest, whose job depends upon his making good; the prisoner is asked half a dozen sharp questions; the jury cries guilty because every iota of evidence is of guilt, and sentence is pronounced. This happens not once nor twice, but many times each day. On the other hand, a prisoner appears represented by an able attorney. An alibi is easily proved; the police are cross-questioned and confounded; evidence of the prisoner's good character is procured, and lo! the man is 'not guilty,' because he has had a chance to present his side of the case.

"Then there is that social outcast, the man with the 'record,' as ably pictured in Victor Hugo's Jean Valjean. He has been in jail before? Well, that is conclusive proof that he ought to go again. One man was placed in the dock for stealing pushcarts and burning them on election night. He had a villainous face and a record of fourteen arrests. The evidence was meager. The jury said, 'Not guilty.' Speaking to me about it afterward, the man said: 'I have a bad face, but that isn't my fault. The police know me. If a crime is committed within two miles of the place where I am they arrest me on suspicion.' He had a kindly smile and a very human way of talking and thinking, but throughout his life he is a marked man.

"The law presumes a man to be innocent until he is proved guilty. Sometimes, perhaps; but a man who has once been convicted of crime has not one chance in four as against a man with no previous record. Though it is against court practice, the district attorney had no hesitancy in bringing out before the jury the jail record of many a prisoner.

"Offenses against property are savagely punished, while those against the person are leniently dealt with. A good attorney is equivalent to acquittal. A previous record, a ragged coat, a half-starved, wolfish face, all point straight to prison. To those that have, the law gives in abundance. From those that have not, the law takes away the little that they have. Lawyers tell me that of all trial judges in the city, our judge was one of the fairest and most judicial. Yet, in this very court, during the three weeks preceding Christmas, the well-to-do were so kindly dealt with, the wretched poor were so savagely handled that the very stones of City Hall, accustomed as they are to unspeakable iniquities, might well have cried out at the injustice. Such kindness to the rich and well-to-do, such ferocity to those who are already down, if persisted in, must ultimately tear the foundations from under the most firmly established commonwealth." J. W. G.

Proposed Procedural Reform in Illinois.—For several years a movement has been under way in Illinois for the revision of the existing practice act. At the last annual meeting of the State Bar Association the subject of procedural reform was the principal topic of discussion. An elaborate act prepared by Judge Gilbert of Chicago (summarized in the last number of the JOURNAL) is now before the Legislature, but mainly on account of the excessive detail with which it prescribes rules for the judges it is strongly opposed by the bench and a large part of the bar. Nevertheless, the need of reform is generally admitted. The present governor, in his inaugural address and in three successive messages to the Legislature, has dwelt upon the urgent need for revision. In his last message, sent to the Legislature on January 4 of the present year, he declared that in many instances the administration of the law is attended with so much delay, due to defects of court procedure, as to amount to a denial of justice.

"The delays and expense incident to the selection of our juries have become notorious," he said, "but these are by no means the only or gravest evils incident to our present court procedure. On four different occasions during the past few years, general penitentiary deliveries were threatened through the action of circuit judges in *habeas corpus* cases, and statistics show that, omitting two states (Colorado and Utah), more persons are discharged from Illinois jails and penitentiaries through *habeas corpus* proceedings than from forty-one other states and territories combined. The complexity of our present system of practice and procedure, furthermore, has been a prolific cause of the reversal of cases on technical errors having no relation to the merits of the cases.

"The necessity for a revision and simplification of our practice and procedure was discussed by President Taft in his last message to Congress, and the presidents of the executive committees of the State Bar Association and the Cook County Bar Association have expressed the willingness of those associations to undertake or co-operate in the preparation of the desired revision. I strongly urge that the General Assembly at the present session give this matter careful consideration." J. W. G.

Reform in Judicial Procedure.—In a recent address Judge Dorrance Dibbell of the Illinois Appellate Court took occasion to defend the courts against certain criticisms that have been directed against them, but at the same time suggested certain changes which, in his opinion, would improve the administration of justice. No indictment in his county had, he declared, been quashed during the past eight or ten years, and that not more than five out of a total of 2,500 or 3,000 had been disposed of in this way during the last twenty-five years. A large majority of the cases reviewed by the Appellate and Supreme Courts of Illinois during the past ten years had, he said, been affirmed and not reversed. The procedure which makes possible the dispatch of cases in the way in which Crippen was tried, he says, would be impossible in Illinois without legislation such as no Legislature would enact, and which if enacted would not be tolerated by public sentiment. While he favored retaining our present procedure, he suggested the following changes:

1. That amendment of indictments be authorized, subject to the control of the court.
2. That the fact that a juror has expressed opinions based upon newspaper

readings or general conversation shall not disqualify him, if, in the opinion of the court, he would be a fair and impartial juror in the case, such conclusion of the trial court to be subject to review on appeal or error.

3. That jurors in criminal cases be made judges of the fact only, and that their interrogation on questions of law be forbidden or left to the discretion of the trial judge.

4. That the trial courts be given greater control in the impanelment of jurors, and that the review of the rulings of the court on the selection of jurors be limited.

5. That the right of a change of venue be much more restricted than now.

6. That the Constitution be so amended that ten jurors could return a verdict, except for the infliction of the death penalty, when it should be unanimous.

7. That the courts of appeal shall not reverse a judgment rendered by a court having jurisdiction of the parties and of the subject matter, where the trial has been conducted in the general mode provided by law, if the reviewing court is of opinion that, notwithstanding all errors which have intervened in the trial court, substantial justice has been done. J. W. G.

The Administration of the Criminal Law in Kentucky Criticised.—In an address before the State Bar Association of Kentucky at its last annual meeting at Middleboro, Judge H. C. Faulkner of Barbourville criticised the present methods of court proceduce and the whole system generally. Among other things he said:

"Our system of selecting a jury is the most admirable that mankind can devise for the purpose of assembling in the jury box twelve of the least responsible and most ignorant men of the community; so that nothing is easier in common practice than to secure a jury in any important criminal case, the opinion and point of view of every member whereof is well known to the defense beforehand. All that remains to do is to call around the defendant the men who control this irresponsible assembly we call a 'jury' and the work is done; and no judge in Kentucky can prevent it, no matter what his capacity and no matter what his devotion to the cause of justice. It is our duty then to inquire whether the system which we have built up, or inherited from our English, Norman, French and Anglo-Saxon ancestors, will stand the strain of our rapidly expanding commercialism and vastly increasing population, or meet adequately the new form of lawlessness incident to the great combinations of wealth and almost equally great combinations of organized criminals. Frankly, I tell you that I think that our courts, as at present organized and as hampered by our present traditions, customs and machinery, must of necessity fail upon nearly every point where they are subject to serious criticism.

"For several hundred years we have proceeded upon the idea that the individual was of the chiefest concern. All our legislation, all our forms of procedure, all interpretations of common law, and every change thereof, whether in code procedure or statute or by court decisions, has been made in the interest of the individual—not in the interests of the people.

"Where appeals have been granted, they are for the defendant; nothing is final for him. Not so with the other side of the case—the side of the people. No matter how unfair the means used by the defendant or his friends, what influence he has brought to bear, whether family, political or financial, how

much bribery may have been used to bring about an acquittal, no matter how ignorant the jury or what the error committed by the court in favor of the defendant and against the public; whether the result of ignorance, prejudice or corruption—there is no remedy for the people. I am not now contending, and shall never contend, that any one should be twice put in jeopardy of life or liberty for the same offense by the institution of another and different prosecution; I am simply saying that any system which allows the individual to appeal from a judgment against him, and by reversing the judgment of conviction to secure another trial, and, consequently, another chance at acquittal, even when palpably guilty, is grossly unfair when it denies or fails to provide for a like hearing and a like reversal of an unjust judgment, or even an erroneous judgment, against the other side of the case—the people.

"We are foolishly afraid of tyranny—the ancient tyranny of kings—which, in a large part, never existed, and which certainly has not existed for three hundred years. Were it not so, we would not hold on to a system which almost invariably brings together twelve of the most ignorant men of the community to settle the most sacred rights in dispute between one or two of the people and all the balance of the people. And we ask and expect these unlettered men to draw the finest distinction in the law given by the court and to apply the law to the most complicated state of facts. Moreover, we set these men to vote away the life, liberty and property of our fellow citizens before we have ascertained in any way that they are morally or mentally capable of the task; and then we wonder that they do not regard the interests of the public. I feel that the weakening of the confidence of the public in the administration of justice is due, in a great measure, to the incompetency of juries.

"The court of appeals of Kentucky finds reversible errors in over fifty per cent of the cases taken before it. I state the fact for the purpose of showing the general inefficiency of our circuit courts—always supposing the court of appeals to be right. We must not forget the fact that many of them are second and third appeals. The fourth appeal never comes, because a third reversal is equivalent to an acquittal of the most horrible murder case. The truth of the whole matter is that since we have our one-sided appeals in Kentucky we have built up such a precedent in the decisions in the court of appeals that it takes a genius to try a case of simple homicide so that the case will stand in the court of appeals. And even a genius cannot do this and give the commonwealth—the people—a fair trial. Whenever the circuit court judge attempts to give the commonwealth a fair trial he is almost sure to meet with reversal.

"All this brings us back to original principles—back to our system of trial which is a relic of barbarism, the successor of the ancient wager of battle with its formal rules of the game. And so it is to-day; we are all vastly interested that the rules of the game be observed, but little interested in the result. Most of the time of the court of appeals in criminal cases is taken up, not in trying to ascertain whether the judgment is right—commensurate with the crime committed—but almost the sole question to be considered is: 'Did the commonwealth keep to the rules of the game?' No account is taken as to whether the defendant played the game fairly. That is a matter that the appellate court is rarely called upon to consider, and if ever at all, it is after the defendant has been released. Is it a wonder that thoughtful people sometimes complain? The wonder is that they do not rise up in their might and overwhelm the whole system. Whenever we make up our minds that a thousand, two thou-

sand, three thousand people in any one country or community are of as much importance as one or two or a half dozen who may be criminals, right then we will change the whole system for one where the rights of the community are at least of equal importance with the rights of the individual; it is not now so.

"Whenever we shall reorganize our procedure upon simple, modern, business lines—lines of economy, with a simple common-sense care for the rights of the community—we shall leave it to the sound discretion of the trial judge as to whether there shall be a severance, and to what extent, even if he shall have to have a preliminary hearing of the case to determine that matter.

"As it is now, if five men go forth armed in a conspiracy and kill and murder a neighbor, we may convict one of them of manslaughter—rarely of murder—but by the time the trial court has run the gauntlet of the court of appeals on the first case and received a verdict that is fair, according to the rules of the game as interpreted by the court of appeals, all the witnesses, lawyers and prosecutors are dead, worn out or so scattered that no one of the other four is tried even if the court had the time. Other cases have come up and the usual order, on motion of the commonwealth's attorney, is 'filed away.' Such is the course of justice.

"Our jealousy of the judge is such that we have formulated a set of hard and fast rules for his guidance—absolute rules of evidence, strict reviews of every act, word or ruling of the court of appeals. We have devised special machinery to eliminate the personality of the judge. At the same time we have given increased rein to the advocate as well as to the shyster, till now the judge must daily 'sit like a knot on a log' and listen to speeches to the jury—speeches that are the disgrace of our civilization—and daily watch practices which he is powerless to prevent and which are recognized by all the community as void of all semblance of morality. To make matters worse, we have made our judges—all of them—mere puppets of political parties, so that it is impossible for them, or any of them, to be independent, as I know every one of our judges would wish to be. No one who has not been a close observer of our courts can have any idea of the amount of business of the court that is done by the shyster and the inefficient, but it is safe to say that very much more than half the number of all the cases in all of our courts are conducted by this class of lawyers. True, it is often petty business, but the methods of these men bring reproach upon the whole profession, and it is they who make and unmake judges. The ravages of this class of men have been such that many of our best people judge the whole profession by this class alone. Something is radically wrong with any system that brings to the head of the profession, or near it, in any county in the state the worst character in the county and keeps him there till he makes a fortune; and yet I have seen our system do just that thing. It is the finest haven in all the land for the ignorant and unscrupulous knave, both in the protection of criminality and in the fleecing of the ignorant in every walk of life. There are many minor things I might suggest and which I think would help in the way of removing reproach from the courts, but till the bench can be absolutely independent of all sinister influences, until our system is so changed as to have a proper care and respect for the whole community as well as for the individual, until the system will insure the most intelligent and upright men on the jury, rather than the opposite, until we can have a trained bar of our best men, and none other, to conduct

our trials and help the judge, we need not worry over the minor improvements which could be suggested." J. W. G.

Progress of the Law.—In a recent address before the Boston Bar Association Hon. Moorfield Story answered some of the criticisms that have been directed against the administration of the law and defended the bar against the charge that its members are not abreast of the times. Among other things he says:

"It is undoubtedly true that the progress of the law has not kept pace during the last forty years with the progress of science and of other branches of human activity, whether preservative like medicine or destructive like the manufacture of Dreadnoughts and automobiles, which last our Supreme Court very properly holds to be *ferrae naturae,* which for the benefit of those who have learned to pronounce Latin wrong since I left college I will translate freely as beasts that you can take without pay. For this difference there is a reason in human nature. The inventor, the architect, the artist, the author are opposed. Everyone is anxious to find a remedy for cancer, everyone likes a good book, a beautiful building or any addition to human pleasure or comfort. Everyone is glad when Shackleton comes near the South Pole. Everyone rejoices that somebody has reached the North Pole. The world helps them all, feeling doubtless like the man who said, "When I can do a benevolent act and at the same time make some money, I find that all my faculties are working in harmonious co-operation.'

"A reform in law is necessarily won by struggle. It is aimed at some abuse; it is intended to stop some evil practice; at the least, like spelling reform, it renders useless some painfully acquired knowledge, and inevitably, therefore, the change is opposed by those who find their profit in the existing system. We are, as Judge Hoar said, in a different connection, 'conspicuously a part of the thing to be reformed.' Those of us who are immersed in practice are too busy with the law as it is to think effectually of improving it. Those who are not in active practice are regarded as idealists who cannot safely be trusted to deal with questions which they cannot understand. It is easier to postpone than to decide, and the next general court opens its hospitable arms to receive the problems which we are too busy or too lazy to settle.

"The question recurs, what are the remedies? Lord Brougham told the father who wished to know how his son could become a lawyer, 'Let him read Dante.' We need the power of condensed statement. It is much easier to express an idea in an hour than in ten minutes.

"We can avoid wrangling between counsel, and the courts can do us no better service than by repressing these squabbles, even with severity. They waste time and darken counsel, and the bar would be glad to see them banished from trials. We must recognize more clearly that the object of litigation is not to win victory, but to accomplish justice. We feel strongly our obligation to our clients, but not so keenly our duty as officers of the court. In striving to win our cause by carrying it from court to court and raising every question which ingenuity can suggest, we forget that we are servants of the state, whose interest it is that litigation be ended speedily. The eagerness for victory at any price, which has demoralized our athletic contests and which is so much keener here than abroad, is, perhaps, carried into the contests of late years, with the same demoralizing result. Our oath to delay no man for

malice or lucre and to consent to the doing of no injustice is not an empty form. We must devote ourselves actively to the task of reducing the delay and expense of the courts, and in this work the younger members of the bar will be found the most efficient laborers, and whatever we do or omit we must never forget that our first allegiance is to the law and our first duty to make the law an instrument of justice." J. W. G.

The Trouble With the Jury System.—In an address before the North Carolina Bar Association in June of last year Mr. John W. Hinsdale of the Raleigh bar advocated the abolition of the jury system in civil cases and suggested certain remedies for the evils of jury trials in criminal cases. Speaking of the reasons for the institution of the jury system in England, he said:

"The days of corrupt judges and wicked persecutions by the crown are happily passed. Our liberties are no longer in danger from this source. We no longer stand in need of the jury to protect us from governmental assault. But the halo of glory which surrounds this institution by reason of the splendid conduct of juries in the state trials of past ages still dazzles us with its splendor and unborn generations will cling to it, in criminal cases, with increasing tenacity, love and admiration."

"Our juries are so chivalrous, so considerate to the fair sex, it is almost impossible for a mere man to secure his rights before a jury, without regard to the evidence, when his opponent is a comely and engaging female. Yet, justice is painted blind and juries are sworn. It is an instructive fact that among the nations of the earth which are quite as civilized and progressive as ourselves, the determination of facts in a civil action by a jury is by no means the usual method. In continental Europe one or three judges without a jury are employed.

"The declining popularity of trial by jury, says the *Law Times* of London, is to be gathered from the county court returns, where, out of 890,908 actions that were determined in 1904, only 878 were tried by juries (less than one in a thousand), and seems to point to a distinct decline in the jealous veneration for the system of trial by jury as the fairest system of trial ever known and which has for centuries been an incalculable advantage as an instrument of national education. There is no good reason to doubt the correctness of this statement. In view of the higher standard of education which prevails in England, where the average juror is, therefore, better qualified for the service, and where, presumably, verdicts are more satisfactory than with us, it is a most remarkable commentary upon the wisdom of jury trials. It cannot be explained upon any other theory than that the jury system, in the land of its nativity, has lost its pristine popularity and is no longer prized by the people as the safeguard of their rights. There is absolutely nothing in the principles of a democracy which makes jury trial in such actions necessary or useful in the perpetuation of a republican form of government or in the protection of civil liberties."

He quotes Joseph H. Choate as saying in an address before the American Bar Association:

"If jury trial is so good—if it is indeed the palladium of our liberties—then why not extend it to those cases where it does not now exist? Why not extend it into the vast domain of what is called equity, wherever issues of fact are involved, instead of leaving it to the mere discretion of the chancellor to send an issue to a jury? Why not extend it into the field of admiralty

jurisdiction? If a jury is such an admirable body to determine the merits of an action for damages for negligence growing out of a railway collision, why not leave juries to try every suit of admiralty growing out of a collision, between vessels at sea? If a jury is an apt body before whom to contest the merits of a question of negligence in operating a railray train, why is it not just as apt a body before whom to contest the question of negligence in towing or in navigating a vessel at sea? In nearly every jurisdiction in the United States questions of divorce are heard before a single judge without a jury. Of all questions that can excite human attention, if trial by jury is worth a fig, divorce cases should be tried by juries, and not by a single legal scholar on the bench, who may have no experience in his own life such as enables him fitly to estimate the value of testimony and the situation of the parties. If jury trial is such an admirable system, let us extend it to the decision of all questions of fact, in equity, in admiralty and in ecclesiastical cases. If it is a system of doubtful utility and a bungling and uncertain means of arriving at justice, let us then curtail it, at least in civil cases.

"Jurors are sworn to try all cases according to the law and the evidence. It is their duty, on the one hand, to consider the facts testified to, to determine their weight and to take the law from the court; but they have neither training, education nor experience for this work. They are frequently uneducated and ignorant. To judge and sift testimony and to detect falsehood requires more than ordinary common sense. Jurors are emotional, sympathetic, frequently prejudiced and often regard their oath as a mere matter of form. It is sometimes a task beyond their powers to apply the propositions of law laid down by the court to the facts of the case."

Again he quotes the late Judge Seymour Thompson as once saying:

"The twelve common men thus selected haphazard from a community to sit as jurors in the particular trial, who have perhaps never sat in a trial before, who find themselves discharging an office new and strange to them, surrounded by strange scenes, like children attending for the first time at school, are by that law conclusively presumed to be able to discriminate properly upon all questions of fact, to detect the true from the false in the testimony delivered by a witness, to weigh the evidence impartially—and all this without any aid or assistance from the bench, beyond instructing them in certain general rules which they are told they may or must apply in determining the weight to be attached to the various elements of the evidence.

"There are many other defects in the system. The delays and costs of litigation are very great. Sometimes days are consumed in the selection of a jury. Then again, there are wearisome and needless contests over the admission of evidence. An appeal from an error in admitting or excluding evidence may necessitate a new trial. The judgment is not corrected, but a new trial is ordered, to begin anew the series of blunders and appeals. Property rights are unsafe where they depend upon the whim, prejudices or ignorance of an irresponsible jury. Apprehending a jury's blunder, the prudent man will often compromise a plain right rather than take the chances of a trial before this uncertain tribunal. The purging of the jury list should be committed to a non-partisan and non-elective body, composed of men of the highest probity and intelligence, to be appointed by the court, and they should perform their office in executive session, so that they may not be influenced by personal considerations or be subjected to criticism for the independent discharge of their duty.

A higher standard of intelligence should be adopted in the selection of jurors. None should be called upon to perform this important function of passing upon the liberties and rights of the citizen but those who are well qualified for the duty. None but freeholders, as in the case of talesmen, should be chosen, and preferably men of education, substance and affairs. No one should seek the duty. None should shirk it. There is nothing really attractive in the *per diem*, and a juror to whom this is an inducement is generally an unfit person.

"I would repeal every exemption and I would not excuse any citizen from this most important duty, lawyers and court officers alone excepted. I would leave it to the discretion of the presiding judge, in any extreme case, to excuse. By reason of the great liberality allowed by law in challenges, peremptory and for cause, it not infrequently happens that the jury is composed of the most ignorant men in the community. There are many cases brought on for trial in which the counsel for one side or the other knows that his only safety lies in excluding from the jury men of intelligence. This is no reflection on the counsel whose loyalty to a client requires him to use all lawful and honorable means to secure a favorable verdict; but it is a severe condemnation of the law which sanctions such practice.

"If a juror has formed or expressed an opinion from reading newspaper reports, or upon rumor, and, notwithstanding, testifies that his opinion will not prevent him from rendering an impartial verdict on the evidence adduced upon the trial, and the court is satisfied of this, he should be accepted.

"As a rule, the most dangerous juror is the talesman—the idle hanger-on in the Court House, hungry for the pitiful *per diem* of a juror, sometimes obtruding himself to be called by the sheriff in order to serve a friend, sometimes present by invitation for that purpose. Jurors should never be called from the bystanders. If necessary, the sheriff should be directed by the court to go outside and summon the best men to be found. But even this should not be necessary. A sufficient panel should be summoned in the first instance. At least two full regular juries should be in attendance on the court. This plan has been adopted by some of the counties, and as a result the occupation of the jury fixer is gone and a better class of jurors has been secured.

"The rule that the verdict of the jury must be unanimous has come down to us from our ancestors. This is its chief excellence. Eleven cannot truly solve the problem submitted to them without the aid of the twelfth juror because the truth reposes only in the twelfth! In all bodies, executive, judicial, deliberative, legislative, a bare majority suffices. In the courts of common law and the courts of appeal in chancery, when the judges differ in opinion, that of the majority prevails. When in the House of Lords a peer is tried for crime a bare majority of one is sufficient to convict; in the Supreme Court of North Carolina a majority of one decides the question of law, and in the Supreme Court of the United States in equity causes the most difficult questions of fact, as well as of law, are decided by a majority of one. As Mr. Forsyth asks, 'Should the rule be different for twelve jurors, and why, if there be a single dissentient among them, can no verdict be given?' It seems to be a matter of indifference how the concurrence of the twelfth man may be secured, whether by the agency of close confinement, or depriving the jury of meat, drink, fire and candle, as of old, or what not, the truth is reached only when the twelfth man succumbs. It may be that the dissenting juror is honest in his convictions; doubtless he is; but he must be persuaded to join the majority, although 'he that complies against his will is of

his own opinion still.' He may stand out either from fixed convictions or from ill-will or partiality to the suitor. He may have been selected as a juror for the purpose of hanging it, 'for under the unanimity system any one juror gained and properly armed—armed with the necessary degree of patience—suffices. The result—a mistrial and the trouble and expense of another trial.'

"A great defect in our system of trials is the reluctance with which judges set aside the verdicts of the juries. There is nothing sacred in the verdict of the twelve fallible men. They frequently make mistakes. Of course, it is not a pleasant duty for the judge to tell the jury that they have blundered. The usual formula in denying a motion for a new trial is, 'I am averse to disturbing the verdict of a jury.' If it is wrong, it ought to be disturbed. The judge who said 'it takes thirteen men in my court to deprive one of his land,' was eternally right. I would by statute require the trial judge, in passing upon a motion to set aside the verdict, to find that the verdict is, or is not, in his opinion, against the weight of the evidence, and to set it aside whenever, in his opinion, it is against the weight of evidence.

"The error of the lower court in setting aside or refusing to set aside a verdict may work a grievous and irreparable wrong. If the whole evidence, as certified by the Appellate Court, discloses a case in which it is apparent that the jury could not have reached their conclusion, save by mistake, or misapprehension of the legal effect of the evidence, by passion or prejudice, or in which the verdict was plainly and manifestly against the weight of the evidence, an appellate court should set it aside. The setting aside of unjust verdicts is one of the most important functions of the judicial office. The errors of law of the lower court may be corrected on appeal. The mistakes of fact of the jury are irremediable, unless the lower court shall be required to interpose. If this court refuses to do so in a plain cause, why should not its error in so refusing be corrected?"

J. W. G.

Criminal Trials in Pittsburg.—It has been quite widely heralded that the civil courts in Pittsburg are far behind with their business, mainly due, it is generally believed, to the large number of personal injury cases furnished by this tremendously congested industrial center. It is interesting, therefore, to learn that the same condition does not now obtain in the criminal courts. The report of the district attorney of Allegheny County for 1910 is published in the Pittsburg *Legal Journal* for January 7, 1911. It furnishes some very interesting information as to the criminal business of the county during the past year. There were 2,799 indictments disposed of, 23 more than the grand juries returned during the year. Of these 250 belonged to terms prior to the year 1909. Of these 2,799 indictments, 18 were quashed, 172 were nolle prossed on motion of the district attorney, 179 were settled or withdrawn by leave of court, 963 were disposed of by pleas of guilty, and 1,470 were tried before juries. There were also 1,024 informations disposed of, comprising desertion and non-support and surety of the peace cases. This record is the more creditable on account of the large number of graft cases involving unusual preparation. There were altogether 149 graft indictments, 125 of which were returned by grand juries sitting in 1910, and involving 98 councilmen, seven bankers and four merchants. Sixty-six of these indictments remain to be disposed of. The grand jury was in session a total of 117 days during the year and acted on 3,520 bills, ignoring 744 and returning 2,776 true bills. Thirty-six homicide cases of all

grades were disposed of during the year. There were three convictions of murder in the first degree and two acquittals on the ground of insanity, the men being committed to institutions for the insane. One case which received wide newspaper notoriety is especially commented on. A thirteen-year-old Italian girl, Katharine Botti, was acquitted of murder for killing her godfather, Pasqualle Volpe, who had seduced her. The newspapers published this as a case of the "unwritten law." In fact, the defense relied on was that the killing was done in self-defense against an assault made by the deceased. Besides the 66 graft indictments there remain undisposed of for all reasons a total of 298 indictments. Of these 173 are December term, 1910, indictments and 53 November term. There remain only 19 cases of terms prior to 1910. In 83 of these remaining cases no arrest has been made on account of inability to find the defendant. It would appear from this report that the business of the criminal courts of Allegheny County is practically up to date. Indictments are frequently tried as promptly as the week following that in which they have been returned by the grand jury. There are no separate judges for the criminal courts, the common pleas judges sitting in the criminal courts in rotation. Allegheny County contains, according to the census of 1910, a population of over one million persons, most of it in congested centers along the rivers and largely employed in the immense industrial establishments of the "Pittsburg district." The report of the district attorney shows that in spite of the large increase of population in recent years, the existing machinery is adequate, when vigorously and efficiently administered, for the business of the criminal courts. The whole report is interesting and instructive to the criminologist. E. L.

Methods of Selecting Juries.—At a recent meeting of the Allegheny County Bar Association, the report of a committee on the drawing of jurors was presented, reviewing the methods obtaining in New York, Chicago, St. Louis and Boston, and suggesting some improvements in the methods followed in Pittsburg. The Pennsylvania statute provides for the election of two jury commissioners who, with a judge, meet and select from the qualified electors of the county a sufficient number of proper persons to serve as jurors in the several courts during the year. The names of the persons selected are placed in the jury wheel, which, locked and sealed, remains in the custody of the commissioners and the keys are kept by the sheriff. When it becomes necessary to draw a panel of jurors, the sheriff goes to the jury commissioner's office, and there in the presence of the commissioners the wheel is opened and the names of the proper number of jurors withdrawn and a list thereof made. The wheel is then sealed as before and the jurors are summoned by the sheriff. In practice, the committee finds that the judge secures his list of names by sending out letters to persons known to him or of whom he knows, asking that names be sent him of persons qualified for jury service. Of the greater part of these persons he has no knowledge of his own as to their fitness. The jury commissioners get their names in three ways: First, names are left at their office by persons who wish to serve as jurors; second, names are handed them by third persons; and third, by each commissioner requesting the county committeeman of his political party to send in names for jury service. The report says: "When this act was passed, the small population and the few jurors required, rendered this method of selection fair and reasonably effective, but the enormous increase in both has rendered it entirely unsatisfactory for the

reason that it is not possible for the judge or the jury commissioners to even ascertain the fitness of any person for jury service outside of those with whom they may be personally acquainted."

The New York method was investigated by the committee. There the judges appoint a jury commissioner, subject to their approval, and he may employ such assistants as he may find necessary. He has full power to make up lists of jurors, is an officer of the court, and may be removed at any time by the judges. He must prepare two separate lists, a "non-voters'" and a "voters'" list. The commissioner consults the registry lists to ascertain the names of persons eligible as jurors, and also, in the case of those who have not registered, the directory, tax records and any other available source. He may notify any one to appear before him to be examined as to his own or any other person's qualification to serve as juror. The jury wheel is filled by the commissioner, and at the times for drawing juries the names are drawn in the presence of a judge and the jurors summoned by the commissioner. He always has on his roll a large number of names and also a large number in the wheels. He has made provision for those who desire to serve in certain months, as less likely to interfere with their private business. Thus a carpenter can serve better in winter than in summer, and a jeweler in March or April than in November or December, and separate wheels are provided into which these names are placed, corresponding with the month which they themselves have selected, and thereby much dissatisfaction has been removed and fewer ask to be excused on account of their business engagements. No publication of the panel is made, but anyone who wishes may have it upon payment of a fee. The report commends these provisions and says: "The character of the jurors obtained under the workings of this act are good. The district attorney and a number of lawyers were visited, and were unanimous in their belief that no better method could be found." In Chicago, the judges appoint three commissioners and may remove them. The commissioners may appoint a deputy in each precinct whose duty it is to furnish information as to persons fitted for jury service. They also have the power to summon before them any person for examination under oath as to any person's qualifications for jury service. These provisions the committee consider desirable, but they do not think as good results are obtained in Chicago as in New York. In St. Louis there is a single commissioner appointed by the judges. He has power to examine under oath any person as to qualifications for jury service and every second year, in person or by deputy, he visits every house in the city to ascertain persons qualified for and subject to the performance of jury duty. In practice this is done by sixty to seventy canvassers who make a house-to-house canvass. In Boston the board of election commissioners make up the jury lists, but no name is to be placed on the list until the board shall have investigated by inquiry at his place of business or residence concerning his fitness for jury service. The board may require this inquiry to be made by the chief of police and may also require information from anyone as to fitness for service of any person.

The report concludes: "In nearly all the systems above mentioned, there are periods of entire change of the names in the wheel which does not in practice seem desirable. In other words, in the judgment of your committee, there should be a continuous putting as the drawing out takes place, in place of having any period at which the whole of the names must be changed. By this method it will be impossible at any time, no matter how corrupt the officers may be, to

have in a jury wheel only the names which the parties desire to be drawn out. As a result of a careful examination into all these systems, your committee recommends: That it be authorized to prepare and present to the legislature for enactment a statute which shall provide: First, that a jury commissioner be appointed by the common pleas judges in counties having more than one million and less than one million four hundred thousand inhabitants. Second, that this commissioner shall have ample powers to enable him to secure names for and prepare a jury roll from which jurors shall be selected, with full powers to determine the qualifications for jury service. Third, severe penalties for any tampering with the selection of jurors or the violation of the provisions of the act." E. L.

Treatment of Criminal Inebriates.—In an address before the International Prison Congress at its recent meeting in Washington, Dr. Daniel Phelan, surgeon to the Dominion penitentiary at Kingston, Ontario, considered some of the problems involved in the care and treatment of the criminal inebriate.

"The criminal inebriate," he said, "is either a criminal from instinct, heredity, or training, and his drinking is more a symptom of his former degeneration, or he is a criminal because of his continual use of spirits destroying his ethical relations of right and wrong. In both cases he is a low type criminal, sometimes brutal, but usually cowardly and servile. These two classes should be deprived of their liberty by special enactment, and should be confined in special institutions, where military discipline, hygienic supervision and practical work can be a part of their treatment. Experience goes to show that the criminal inebriate can be best studied in establishments of detention as to their physical condition their past life, their characteristics, age, physical endurance and previous habits of living. The habits of industry may be utilized for its beneficial effects on the metabolism of the body, as well as to develop attention, restore confidence, and provide safe fields for the emotions. This, too, so far as is known by those working in this field of inquiry, offers the most promising outlook. Every student of the subject agrees that a percentage of such persons can be permanently restored and made useful citizens, the number, of course varying.

"As in fully one-third of all cases of inebriates the use of alcohol is a symptom of some brain defect, either congenital or acquired, and as crimes are often the earliest manifestation of the mental derangement of which the drinking is only a symptom and conceals the whole condition, establishments for the detention of the criminal inebriate have frequently afforded opportunities for the detection of grave mental conditions which have long been masked by alcoholic indulgence, the drinking being frequently a symptom of insanity or general paralysis of the insane, the prominent symptoms of which conditions manifesting themselves shortly after the withdrawal of alcohol in institutions of detention. These symptoms have been characterized by disorders of memory, delusions of grandeur and ideas of great importance and power, auditory hallucinations, great suspicion and various sensory disturbances and motor defects; hesitation in speech, failure in judgment, and a complete change in the disposition and conduct of the inebriate. When a criminal inebriate is admitted to an institution he is generally found in such a confused mental condition as to be unable to reason and act naturally—he has no knowledge of any crime committed. The brain is enfeebled and unable to act normally because of false

impressions and imperfect power of control. Confinement in these institutions often reveals the true conditions in paresis, dementia and death. This is not so much to be wondered at in view of the fact that the criminal inebriate so often displays a distinct neurotic taint and a predisposition to mental instability with feeble power of control, due to the depressant and paralyzant effect of dring on the nervous centers. Inebriety is a degeneration which often masks and conceals insanity and allied conditions. According to the laws governing growth and development the highest elements of brain activity and power—the character—are formed last, but from the addiction to alcohol they are the first to be destroyed. Fully 80 per cent of all inebriates are born with defective brains and are descendants of inebriate, epileptic or feeble-minded parentage, and at least 70 per cent of all perpetrated crimes are directly or indirectly attributable to alcoholism. Fully 20 to 25 per cent of all insane owe their insanity to alcohol. Alcohol was often the direct cause of epilepsy in a drinker, and fully 30 per cent of epileptics have alcoholic parents. All men are responsible to society which cannot punish—it can only protect itself. The man who investigates the peculiarities of a murderer is keeping the main idea in view—it is the same with the inebriate.

"After many years of study and observation in connection with this important subject, and being connected with the largest institution for criminals in the Dominion of Canada, the Dominion penitentiary at Kingston, in which, as a matter of course, a large number of criminal inebriates shortly after their sentence are committed—there being no establishment of detention in the Dominion of Canada—I am in the position to make the statement that the only method to treat the criminal inebriate is to place him in an institution where his whole method of living is completely changed, where he can have food, regular hours, healthful reading material and suitable employment.

"The inebriate is a drunkard and drunkenness is alcoholism. The word dipsomania is often used synonymously with inebriety, drunkenness and alcoholism, but it should not be so. A person may have dipsomania and not suffer from any disease and may never have taken a drink; it is a periodic desire for drink—an alcoholic predisposition or susceptibility. When a man cannot stop drinking he is a drunkard, or when a person finds that he cannot conduct himself soberly under the social conditions which are normal to his time, then he is a drunkard. That drunkenness is at the bottom of most crime, pauperism, and lunacy, requires no formal proof. Drunkenness, some say, is not a disease, but a vice; drunkards are not insane but degraded. Drunkenness is more a vice to be reformed than a disease to be treated. If the purpose of punishment is the prevention of crime, the reformation of the criminal, and the protection of society, then the prison is no place for the inebriate offender. An inebriate reformatory is the proper place for him where his defects may be found out; a year being long enough in that institution, as the atmosphere of an institution is not calculated to restore the positive side of character; a long residence in an institution of the kind destroys initiative and weakens the will. The irresponsibility of drunkards has at last been recognized in England; this is a great concession and places a new complexion on crime. The Inebriate Act implies that drunkenness is a disease, and the drunkard a patient. Under this Act anyone who has been convicted four times in one year on the charge of drunkenness, or anyone who has committed petty crime while under the effects of drink and is known to be a drunkard, can be sent to the Inebriate Reformatory for

a period of three years. If the inebriate commits an offense, he is at once sent to prison and soon becomes an incorrigible criminal and his reformation is impossible. If an inebriate is prone to commit crime, as we believe, there is reason why he should be confined before he has occasion to do wrong. An experienced medical man should be attached to every police court to look after such matters. An inebriate reformatory for criminal inebriates, and others, is necessary, to repair the person's physique in every way; where he should be free from the irritation of friends and where he could be employed in agricultural pursuits which are very beneficial for him, and after his term had expired he could be discharged from the institution as a useful member of society."

Administration of the Criminal Law in Delaware.—Governor S. S. Pennewell of Delaware, in his recent message to the legislature, refers to the criticism against the law's delay in that state, especially in regard to capital cases. "Such long periods intervene," he says, "between the judgments in the lower courts and the final judgment of the Supreme Court that many persons think the effect of conviction is to a great extent lost." While it is hardly fair to deny the right of appeal in capital cases, the governor is strongly of the opinion that there ought to be a more expeditious way of determining whether harmful error has been committed by the trial court.

"The object of an appeal," he says, "must be to ascertain whether substantial justice has been done the appellant in the lower court, and to have his rights determined by the court of last resort. If the same object can be attained in a simpler way, and by an early decision of the same judges who, in case of appeal, would have composed the highest court, certainly there is no good reason why it should not be done."

The governor recommends that the constitution be so amended as to take away the right of appeal in criminal cases and to provide in lieu thereof, that on a motion for a new trial and in arrest of judgment, every question may be determined that could be settled on appeal, either by the law judges or the chancellor. In this way a final decision could ordinarily be reached during the trial term, and in any event, at the succeeding term. "These ends cannot," he says, "be attained by providing more frequent terms of the Supreme Court, for the reason that the judges are now required to be almost continuously engaged in the lower courts. The practice of trying petty criminal cases in the county courts should be abolished, as such business takes up the time of the courts which should be devoted to the consideration of more important cases." The governor, like many other state executives in their messages, dwells upon the evil practice of carrying concealed weapons. "Such a practice," he says, "is a most pernicious and dangerous one. From it undoubtedly result most of the crimes involving personal violence with which the courts have to deal, and the abolition, or even some limitation, of such practice would be productive of the greatest public good. The punishment for the crime of carrying concealed, deadly weapon was increased at the last session of the legislature, and the maximum penalty is now perhaps commensurate with the offense.

"It is difficult to find a cure for the evil, or even to suggest any means of curtailing the practice to which we have referred. It has occurred to me, however, to recommend for your consideration the enactment of a law that shall make it unlawful for any person to sell a deadly weapon, commonly called a pistol or revolver, unless he shall have first obtained a license authorizing such

sale. And I suggest that the cost of such a license shall be a very substantial sum, because I am convinced that it will be decidedly for the public welfare and safety if the number of places at which such weapons can be bought is materially reduced. It ought not to be easy and convenient for any person to obtain such dangerous things, and the sale thereof should, in my opinion, be restricted as much as possible."

The governor also recommends an amendment of the law relating to the release of juvenile offenders on probation. "Since the enactment of the present law in 1895," he says, "we have learned much about the treatment of juvenile offenders and hence the law no longer embodies the most enlightened practice. The present law is really nothing more than a parole law. Probation officers should be attached to the criminal courts as is the practice in other states. Under the existing law a youthful offender cannot be paroled until after conviction, and in cases of felony this may lead to unfortunate results. The courts should have the power to release such offenders on probation before conviction whenever, in their judgment, all the facts and circumstances warrant such release." J. W. G.

Some Reasons for the Growing Disrespect for the Law.—The above is the title of an address delivered by Mr. E. M. Grossman of the St. Louis bar before the State Bar Association of Missouri at its last annual meeting.

"That there is a growing disrespect for the law," he said, "is patent to all observers. Leading newspapers of the country barely miss a daily editorial criticism of the inefficiency of our legal system. Magazines make the law and its administration the subjects of their popular assaults. Judges, lawyers, distinguished teachers of the law, sociologists, publicists and philosophers, as well as merchants and laborers and the man on the street, join in criticism and denunciation of our courts, the bar, the law and its administration.

"Our criminal law is, of course, the great cause of popular discontent. To it more than to any other department of the law may be charged the growing disrespect of all law and the loss of prestige of the lawyer. It is a most deplorable fact, and to the great shame and discredit of our civilization, that in this country, at this advanced age, the statistics show more homicides in proportion to population than in all the principal countries of Europe put together. It is said that we are guilty of about 9,000 homicides annually, with only little more than one out of every one hundred avenged by legal execution. But such lax treatment of crime is not altogether to be charged to the law. The people themselves, who, through the jury, fix the standard of conduct, are largely to be held accountable. At the same time, the law itself must bear much of the blame. Judge Amidon of the United States District Court declares that the criminal law has broken down, that 'it is an unworkable machine.' (*Outlook,* Vol. 83, page 601.) It certainly is more conspicuously true here than it is in the other branches of the law that the individual is protected in what seems to have become a vested right to commit wrong, and the social welfare is overlooked if not brazenly disregarded. The announcement in the press of the commission of a shocking crime and the capture of the culprit carries with it not the slightest conviction that the right of society will be vindicated by the punishment of the individual. Everyone will admit that delay in the prosecution and disposition of criminal cases is an important factor in the inefficiency of legal procedure. But the technicalities of the criminal law are chiefly responsible for the deplorable state of public disapproval.

The vicious doctrine of presumed prejudice, presumed, as in this state [Missouri], from error of even insignificant triviality, even from error committed by a stenographer in the misspelling of a word, or in the omission of the article 'the,' though the crime with which the defendant was charged and found guilty may have been the most atrocious known to our civilization, the rape of a ward, or the betrayal of a public trust, has brought upon our law and courts such a storm of disapproval that lawyers find it futile to attempt to allay it. The criminal laughs at the over-zealousness of the appellate court to protect his individual rights and returns to society to continue with greater assurance his vicious depredations. In the meantime, there is nothing left for the people but a hopelessness and a disgust for the learned legal profession and the determination to take the law into their own hands whenever occasion again arises.

"It is for the protection and welfare of society at large that the law exists. A criminal has rights, but so has the state. In ages past, when the crown or the ruling class had a tendency to oppress, the care and solicitude for the individual charged with crime indicated a leaning toward the popular welfare that won for the courts the approval of the people and the commendation of all history. But in these times, when the state is not a crowned head, nor a favored class, but when the state is the people and all the people, to make a fetish of the rights of a criminal as against the rights of society is a perversion of law and an encouragement to the tyranny of the lawless and vicious. It is a pleasant platitude that better than that one innocent man should suffer let nine guilty men escape. With the publicity given to criminal trials, the care with which the defendant is made acquainted with the charge against him, the invariable rule that a defendant shall be represented by counsel, whether he can compensate such counsel or not, the facilities provided by the state for appeal after conviction, the scrutiny applied to the record by the appellate court, the liberality with which the pardoning power is exercised, the conviction and incarceration of an inncoent man is practically unheard of. There is now no longer any danger of convicting and of holding in confinement an innocent man. But our devotion to the platitude results in no innocent man suffering while nine out of every ten guilty ones continue to escape. In our highly organized society, in the congestion of urban life, on account of the delicate interdependence of each upon all, it is not altogether a too revolutionary doctrine to say that the peace, safety and welfare of society demand that the vicious and criminal shall be segregated from it even though there may be danger that with every nine of them one innocent man shall become a martyr to the majesty of law and order.

"Probably the most vicious of all the shields placed in the hands of an accused against the attempt of society to vindicate its rights to peace and security is the perversion of the wholesome constitutional provision that no person shall be compelled to testify against himself in a criminal case. An examination of the history which led to the adoption of this provision by the framers of our Constitution shows that it had been the practice throughout the Middle Ages and down to the War of the Revolution to compel persons charged with crime to make confession, and the compulsion consisted not only of promises of great reward and threats of dire penalties, but of actual physical torture of a kind to chill the blood of all who read. But all that was intended by the constitutional provision was that an accused shall be subjected to no form of compulsion. It was never intended as an absolute bar or even as an impediment to the detection and punishment of crime. And yet that is exactly what it has become today. Instead of

being a wholesome provision for the protection of the innocent, it has become the means of escape for the guilty. Not only do we not compel an accused to testify, but we warn him against offering any explanation at all of the suspicious circumstances that brought about his arrest and indictment. Moreover, juries are instructed by the court that the defendant's refusal to make any statement must not be regarded as a circumstance tending to show his own guilt. Such a perverted application of the constitutional provision results in most cases in the failure of society through its prosecuting officers to vindicate its rights. Worse than that, instead of being merely a safeguard to the innocent individual, it has bred evils as great as it was intended to prevent. Its enforcement exposes the prisoner to the inquisition of detectives and fellow prisoners, who through fraud and false pretenses and with the hope of personal reward worm out of the accused what they can, and who are constantly under the temptation to color and pervert the statements thus obtained. In the ordinary activities of life, one suspected of wrong is immediately questioned, and his failure to make answer naturally arouses suspicion, and a vague, confused or false explanation inevitably brings disaster. Because the law in this respect is in conflict with common sense and the natural everyday conduct of life, because the people almost daily are compelled to witness the spectacle of an enemy of society defiantly and successfully resisting the great and expensive departments of police and prosecuting officers in their efforts to protect society against his depredations, and because crime is thus given official protection, the law is naturally and deservedly held in contempt.

"In order to rectify this glaring defect, it is not necessary to return to the evil practices of barbarous times. The constitutional safeguard that no person shall be compelled to be a witness against himself may still be preserved in its full force and intent. But it should be applied literally. Compulsion is the element to be prohibited. It is no violation of this provision, however, to refrain from warning the accused against making a statement, nor to eliminate the absurd practice of instructing juries that the defendant's wilful refusal to make a statement shall not be taken as evidence of his guilt. It would even conform with common sense, and certainly be more conducive to the detection of crime, if an accused were invited, not by a detective, nor by a traitorous fellow prisoner, but by the prosecuting attorney, in the presence of a preliminary magistrate, accompanied by an official stenographer, and immediately upon his arrest and before an opportunity has been afforded to confederates in crime or to counsel, who, when engaged in such business, are equally vicious members of society, to manufacture a story with the hope of escaping punishment or of interfering with the officers of the law in their business of detecting the real offender. Such statements, thus recorded, would be reasonable evidence at the time of trial, and the prisoner's refusal to make any statement, either when invited at the time of his arrest or at the time of trial, would aid the jury in their deliberations of the case. Legislation with such ends in view would not violate the constitutional safeguards thrown about defendants in criminal causes. It would conform to the practice of everyday life, and would make the law accord with common sense. It would result in the conviction of the guilty and not in the slightest degree jeopardize the interests of the innocent any more than they are jeopardized under the present practice. It would eliminate a serious cause for the disrespect for the criminal law.

"The adjective or administrative side of the law shares with the criminal law

the responsibility for the contempt of the people for our whole system of jurisprudence. Nowhere else on the globe, with the possible exception of Spain, is to be found such a studied and well-wrought scheme to defeat the law of the land and its reasonable application. Nowhere, whether in the literature of the times or in the gatherings of men, not even in the midst of any assemblage of the most ultra-conservative members of the legal profession, can be found a sincerely disinterested apologist for our system of courts and legal procedure. The delays and expenses with which ordinary litigation is attended have outworn the patience of lawyers and laity alike. The courts, which should be the haven of refuge for those troubled in material things, are as plague-spots to be shunned and avoided. And the uncertainty with which the fixed and definite rules of law are applied, because of the exaltation of the form of presentation over the substance involved, makes of our jurisprudence a laughing stock to those not immediately affected, and a financial and nervous drain on those who have confided their affairs to its jurisdiction. Lawyers first advise clients to keep out of the courts, and then, though able to expound what the law really is, take great pains to prepare the client against the probable contingency of a purely accidental fate. Decisions are rendered, not on the merits of the controversy, but on some act of commission or omission of the attorney presenting the matter for review to the appellate court. The rules and the machinery supplied for their operation were originally intended and have their sole justification in their usefulness as means to the end that justice may at least be approximated. These rules and our judicial system are now largely mere tools in what has justly been characterized as a game in which the litigant has no part except to pay the expense thereof.

"A flagrant illustration of this is to be found in the decisions of the Supreme Court of Missouri that unless it is stated by the appellant in the bill of exceptions that 'he then and there did duly except' to the action of the trial court in overruling the motion for a new trial, the review of the merits of the cause is denied. Such a disposition of a lawsuit is repulsive to the ordinary sense of justice. In the first place, the failure of the attorney for the appellant to insert in the bill of exceptions that he 'did then and there duly except' has nothing to do with the subject-matter of the controversy, nor is its omission due to any fault of the litigant himself. In the second place, it could very easily be presumed from the very presence of the litigant before the appellate tribunal that he excepts to the adverse rulings of the court below. In the third place, as a matter of fact, the appellant's attorney did not actually 'then and there duly except' to the action of the trial court in overruling the motion for a new trial, and, therefore, the statement to that effect in the bill of exceptions is false and untrue. In St. Louis, at least, unless it be by chance or in extraordinary matters, attorneys are not in court when the judge hands down his decision overruling the motion for new trial. Consequently, unless counsel inserts in his bill of exceptions that which is untrue, namely, that he did then and there duly except,' his client's controversy will not be reviewed on appeal. In answer to this criticism, it is said that the exception is presumed. Certainly it is presumed. Then why require it to be set forth in the bill of exceptions? Furthermore, on what theory of justice are litigant's rights permitted to be sacrified by the failure of an attorney to write out a merely formal allegation? And if this formal allegation is such an indispensable one, why has it never occurred to the courts to offer the parties an oppor-

tunity to supply it? Why make a litigant suffer for the mechanical mistakes of a regularly licensed attorney?

"Bills of exception serve no good purpose. They are merely a snare in which 'the quest for error,' as Judge Amidon calls it, is pursued. They are not considered indispensable to the orderly, logical presentation of a case in some of the other enlightened jurisdictions. They ought to be abolished in Missouri. In England, a copy of the pleadings is furnished to the Appellate Court, together with a transcript of the evidence, and then the question is not, 'Is there error in the proceedings of the trial court?' but the question is, 'Is the judgment just?' What influence is it that prevents Missouri from adopting a similarly sensible procedure?

"The time consumed in the natural course of procedure from one court in our complicated and redundant system to another, aggravated by the numerous instances of delay of a decision after the case has been briefed, argued and submitted to the court, with the altogether too frequent disposition of cases on mere matters of practice or the granting of new trials on account of an infraction by one side or the other of a rule of procedure, together with the expense attending such a tortuous, dilatory and uncertain operation, wholly vitiates the theory that our law is for the poor as well as for the rich. All men are indeed equal before the law, that is, before the substantive law, but the procedure that leads up to its application prohibits the poor man from enjoying its benefits. President Taft, in an article in the *North American Review*, Vol. 187, p. 852, makes the statement:

" 'It may be asserted as a general proposition that everything which tends to prolong or delay litigation between individuals, or between individuals and corporations, is a great advantage to the litigant who has the longer purse. The wealthy defendant can always secure a compromise or a yielding of lawful rights on account of the necessities of the poor plaintiff.'

"Another difficulty in the way of intelligent and effective reform in our judicial system and legal procedure is the utter lack of information as to their operation and effects. No other institution is without its statistics. The reports of public officials in every other department of the public service tell at a glance the cost of administration of the office or department and the efficiency with which its work is performed. A system of statistics showing the number of cases instituted in our courts, the time expended in their consideration and disposition, the number of trials de novo in smaller controversies and petty offenses, the number of appeals upon points of law, the wasteful retrials, the disposition of cases on points of practice, and then the terrific cost, not only to litigants, but to the state at large, would bring about a veritable revolution in our antiquated and unjust system. Because of our lack of definite knowledge, the evils have been allowed to accumulate and to grow until the conditions under which the law is administered have become intolerable. Mere continued complaint, confined as it is to newspaper and magazine discussion and to an occasional Bar Association address, will result in nothing but aggravation of the growing contempt for the whole institution of law and its enforcement, which, if not abated by intelligent and scientific reform, will inevitably bring disaster to our whole social and political fabric. The evils in our substantive law, that law which is the crystallization of the customs and aspirations of the people, they, the people, have the power to correct. But

the evils in the administrative law, in the judicial machinery and legal procedure, the legal profession, lawyers and judges alike, must reform."

J. W. G.

Kentucky Jurists on Criminal Law Reform.—At a conference of the circuit judges of Kentucky, held in Louisville on December 27, there was a discussion of needed reforms in the administration of the criminal law of the state. Judge James P. Gregory, in a letter to the conference, pointed out "The imperative need for reform in the manner of committing lunatics to the asylum and the proper care of the criminal insane," and "The need of drastic legislation for the punishment of those who are acquitted of homicides and other felonies, though clearly guilty of unlawfully carrying concealed and deadly weapons, to which, in many cases, the homicide or other charge is solely due."

Judge Thomas R. Gordon declared that, "The law's delays are proverbial; they are distressing and often destructive to litigants. The judge cannot always decide at once, but we all know the danger of postponing the decision of a case with a hard question. The longer it is delayed, and after full reasonable consideration, the more difficult it is to decide. In this connection, may not each one of us ask himself the question: How long has that case been submitted which I have held longest undecided? We need not answer in this presence, but an interchange of confidences on this point might prove helpful. He must decide. In so far as the law's delays are attributable to the judge, we can virtually wholly relieve the cause for just complaint. It is well known that in some of the districts of the state the dockets are so crowded that delays are unavoidable, but one of the most important of all the duties of the circuit court is to reduce to the minimum delays that can be avoided.

"The Legislature, I think, has manifested a commendable disposition to aid the courts in the administration of the law. The last Legislature passed the Special Judges Act and created a new judicial district to meet an overcrowded condition of the docket and authorized the publication of all the decisions of the court of appeals. I do not doubt that any responsible and just request made of the people's representatives for the betterment of the enforcement and administration of the law will receive respectful consideration, and, for the most part, approval at their hands.

"There are too many reversals of cases by the court of appeals. I do not say that the higher court reverses cases that ought not to be reversed. Upon that there may be difference of opinion, but that court is the court of last resort; its decisions, except when a federal question is involved, are final, and being final must and should be accepted as right. However, the difficulties of the trial judge are not always understood and appreciated; he 'treads the winepress alone;' he must decide without conference with another judge, while in the court of appeals there are seven judges. During the progress of the trial he must decide promptly and, in a jury trial, with little time for examination of authorities, and with but brief argument of counsel on questions that arise, and, more frequently, without argument at all. At the conclusion of the testimony he must be ready to write the law of the case in form of instructions, sometimes with instructions offered by either side in such form as to present only the side of the case from which the instructions come, and often merely to save the question, and many times without instructions at all. After verdict and judgment the case goes to the court of appeals; the trial judge having decided a great

many questions during the trial, all preserved for appeal by exceptions, and the court of appeals finds here and there a reversible error and the case must be tried again. I make no complaint, but, manifestly, it is easier to find errors than it is to avoid making them.

"The circuit judges, however, should recognize the fact that the responsibility for reversals lies at their door and the most vigorous effort should be made to reduce the proportion. The fact that perhaps 90 per cent of the original judgments of the circuit judge are final and determine the rights of the litigants is often lost sight of, and only the appealed cases considered, and if there is any possible way to accomplish it, the number of revelsals should be reduced."

In his paper on "Needed Legislation," Judge J. W. Henson pointed out many defects in the criminal and divorce laws of the state, as well as the lack of power given to the court of appeals in reversing cases. He said in part:

"I appreciate and indorse the law that gives to a litigant the right in certain classes of cases to have his cause submitted to a jury, but where he fails to show with some degree of certainty that he has established his complaint, why submit it? This rule has been carried so far and the line spun so thin and small that the trial judge finds himself required in many instances to submit a case for the plaintiff where a verdict and judgment in his favor would work a manifest injustice. Under our rule, if such a verdict is set aside, the case must be tried again. If the trial judge refuses to set it aside, the court of appeals may or may not reverse it. If that court does, it sends it back for a new trial. Why should not the appellate court, in a case where it holds that a peremptory instruction should have been given or that the evidence does not sustain the verdict, direct in its judgment a dismissal of the cause? Why should the appellate court send such a case back for a new trial? The plaintiff has had his day in court, and the court holds that he has failed to sustain his complaint, yet under our rules the case is sent back to be tried over again at perhaps great, and always at some, expense to the state and the parties.

"Why not define all crimes so that every necessary element could be seen at a glance? If this was done there would seldom be any difficulty in framing an indictment or giving an instruction. A simple definition or form could be given that would clear away much rubbish that now obscures and mystifies the case. Why require a jury to believe beyond a reasonable doubt that the defendant 'feloniously' did a certain act, when not a member of the panel knows what the term 'feloniously' means, unless the judge defines it, and then he may not define it correctly. Frequently an indictment is fatally defective because the commonwealth's attorney has failed to use that word in drawing the indictment. The rigidity of the criminal law rules almost sacrifices the substance and effect for a form. This is but one of the great many illustrations that could be given of our infirmities in criminal laws. They should be codified and simplified. Under our rules of practice the defendant in a criminal case has greatly the advantage at every stage of the proceeding. There is a rapidly growing disposition among the better classes to disqualify themselves and remain off the jury. They are taking the daily and weekly papers, which are brought to their doors by the free delivery and rural route systems, and when they are tested as jurors they have in many, yes, in many cases, especially the important ones, formed and expressed an opinion, while the indifferent ones called for jury service qualify themselves. Aided by this condition and by giving the defendant fifteen peremptory challenges, he is practically given the power to select the jury. If he

should be held guilty by all the twelve jurors so selected he may appeal, and if the judge has made a little slip here or there to his remote prejudice he will be given a new trial, with chances largely in his favor of acquittal, because interest and witnesses are usually gone when the case is called for the second trial.

"Should some unforeseen and mysterious agency intervene and cause his final conviction, I refer to the really contested cases, he can and frequently does appeal to the governor for a pardon. This fountain of relief is upon elevated ground, yet it is inexhaustible. From it the burning thirst is often quenched and the sick are healed at the expense of the well-disposed members of society. If the defendant should fail in securing a pardon he is not very greatly alarmed, for a parole is awaiting him. He is given under the indeterminate law, passed during the last session of the Legislature, a judgment committing him to the penitentiary for an indefinite time within the periods now prescribed by law, and this without reference to whether or not there were aggravating or mitigating circumstances in his case. He must serve the shortest time, but if he can restrain himself and be good during that time he will then be given his freedom for being good while in prison, his freedom not depending at all upon the nature of the offense which he had committed. The law is an unwise one for this and other reasons.

"The parole law is unwise because it gives the prison board too much power —a power that can be abused without any restraint. I favor a law that simply permits the jury to pass upon the guilt or innocence of the defendant, but the present law should be amended so as to permit the judge to fix an indeterminate sentence at or within the minimum and maximum periods now prescribed. The judge trying the case knows all the facts and circumstances, and justice could be meted out better and more uniformly by giving him the authority to fix the shortest and longest time of confinement at or anywhere within the limits now prescribed for the offense. This rule would preserve the merit system extended to the prisoner while confined, but especially would it insure a reasonably adequate punishment for the crime committed, otherwise the people will go unprotected, crime will be encouraged and go stalking and unwhipped in our land. All pardons and paroles excite hope in the breast of the wicked and tend to encourage crime. After one has had a fair and impartial trial and been found guilty, he should be required to pay the penalty of his wrongdoing; in other words, he should be required 'to render to Caesar the things that are Caesar's.'" J. W. G.

Justice Delayed Is Justice Denied.—At the last meeting of the Iowa State Bar Association, ex-Governor C. S. Thomas of Denver, Colo., delivered a remarkably strong and frank address, entitled "Justice Delayed Is Justice Denied," in which he severely arraigned our methods of administering justice. We commend it to the thoughtful consideration of the bar. "Fully half the business of the appellate courts," he said, "is devoted to the disposition of questions of practice not affecting the merits of the controversy, and thousands of cases are reversed and remanded for errors in practice, at enormous expense to the losing parties, whose rights to relief upon the facts are unquestioned. Our libraries are in consequence crowded with reports and text-books on pleading and practice, which we consult only to be bewildered, and then take our chances in selecting precedents, realizing that in any event we must run the gauntlet of a review of our procedure if we succeed in the trial court.

"Motions to strike, to make more specific, to elect, to amend, to advance,

to continue, run riot through the records of every controversy, tripping the wary and the unwary in their progress towards the issues, while instructions requested, refused or given, strew the way to judgment with many pitfalls. The court may not so much as infer an inevitable conclusion from a conceded fact without trenching upon the province of the jury, nor give an oral charge of half a dozen words lest the germ of error intrude its poisonous presence into the body of the judgment. He is a wise judge and a fortunate attorney who in an important and bitterly contested case can hold a steady course through the shoals and reefs of modern technicality and cast anchor safe and sound in port.

"The facilities supplied by our methods of procedure for delaying the formation of the issues and their trial, for injecting errors into the record and reversing judgments upon grounds not affecting the merits, justify much of the lay criticism of lawyers and their methods. The slow process of the courts, the miscarriage of justice through technical reversals, the consequent expense of litigation to both litigants and the public, all these things are laid at our door. It not only declares that we are the cause of these conditions, but in its view we have deliberately and intentionally constructed the vicious system that we may extort wealth from its unfortunate victims. Justice, says the layman, is not only blind, but has become deaf, rheumatic and ill-tempered, while her servants, taking advantage of her infirmities, are concerned not so much in serving her petitioners as in plundering them.

"Indictments which vary the breadth of a hair from the established formula in statement, punctuation, the use of a capital for a small letter, in the omission of an article or an adjective, upset the most carefully conducted trials, reverse verdicts of unquestioned integrity, cheat justice of its dues, and defeat results fairly obtained through infinite labor and expense. Jurors who ever heard the most remote fact relating to the charge, who have acted in cases similar in character, who are acquainted with the fortieth cousin of the prosecuting witness, or who ever inquired concerning the health of a member of the prisoner's family, who can read or who do read the daily press, who have scruples conscientious or otherwise, about anything or anybody, or who confess to having no scruples whatever, who are religious or the contrary, whose politics are opposed to those of the prisoner, who may be prejudiced against or who may favor the enforcement of the law, are alike subject to disqualification or challenge for cause. An opinion once harbored may be fatal, though it may have been changed or discarded. Its expression is liable to prove as serious an objection to him as the crime to determine which he is summoned into the box. His past life from the cradle onward is the subject of minute and extended inquiry. If during his career he has ever consciously or unconsciously done anything to indicate an aversion to crime or its punishment, he will not be permitted to officially consider its commission or its punishment. And if the trial court in the exercise of a discretion which no longer exists as a definable quantity shall depart ever so slightly from the line of duty as it shall seem to the court of review, in overruling or in sustaining an objection to competency, the prisoner is free until a new trial, conducted in similar manner, and subject to the same probability of error, shall otherwise determine, and such determination shall have encouraged and sustained the ordeal of a review. But these are merely preliminary difficulties. The admission and exclusion of testimony, a chance remark of the court in the jury's presence concern-

ing the evidence, or the attitude of a witness, the momentary separation of the jury or the absence of the prisoner from the presence of the court during the occurrence of some trivial matter in no way affecting his substantial rights, and above all the instructions of the court, all these details are fairly alive with the germs of probable error and consequent reversal.

"Those great principles of Anglo-Saxon jurisprudence and the presumptions arising from them, designed to safeguard and protect the innocent, have become in modern times the very citadels of protection for the guilty. Reasonable doubt now means any doubt whatever, real, reasonable, unreasonable, or imaginary. True, the adjective 'reasonable' still appears in all dissertations and instructions upon the subject, but it has been defined, refined and superfined until lawyers themselves, to say nothing of juries, intelligent or otherwise, are hopelessly bewildered by the multitudinous decisions upon the subject. Hence anything short of absolute and overwhelming proof of guilt must give way to such doubt or doubts as the average criminal juror has, or thinks he has, relating to the testimony.

"The same is true, in a degree at least, of the presumption of innocence, which has been tortured into meaning that no other presumption can be entertained, without imperilling the valadity of a conviction. Former jeopardy in these days finds a solid basis upon confused or compromise verdicts and operates in many directions besides that of judgment on the merits. It sometimes leads to conclusions well illustrated by the decision of the Supreme Court of California in *People v. Huntington,* 138 Cal., where the defendant, charged with performing a criminal operation, was tried, convicted and sentenced to ten years in the penitentiary. He had been indicted for murder; but the judge committed the mistake of telling the jury it might find a verdict for manslaughter. This was favorable to the prisoner, and secured him the lighter sentence. Upon appeal, the judgment was reversed because of this instruction, although favorable to the prisoner. At the second trial the defense of former jeopardy was encountered by the prosecution, whereupon the court, in order to bring the defendant to justice, proposed to try him for murder and sentence him for manslaughter. The Supreme Court interfered, saying: 'We know of no case where a court could proceed to try a defendant for an offense of which he has been acquitted. He cannot be tried for manslaughter, because he could never be accused of it; nor for murder, because he has been acquitted. If tried, he may be convicted of a crime which the evidence shows he did not commit, for the reason that the evidence shows that he did not commit another crime of which he has been acquitted.' And so the convicted one was in the end not convicted at all. Such miscarriages of justice are possible only by sacrifice of substance to form, by perverting the safeguards for the protection of the innocent into agencies for the acquittal of the guilty.

"The defense of the 'unwritten law' is but one of the many manifestations of a sort of legal insanity which frequently invests the modern murderer with complete immunity. If he can establish the suspicion of undue intimacy between the deceased and some member of his family, or prove any so-called eccentricity of his own or of an ancestor immediate or remote, followed by any betrayal of excitement or the lack of it upon his part when the homicide was committed, which will enable his counsel to prepare a hypothetical question of ten thousand words to be propounded to and answered by half a dozen medical gentlemen possessed of many degrees, his chances of acquittal are

more than even. Nothing of human conduct is too absurd or too commonplace to be excluded from the hypothesis, and the defendant is solemnly declared by the expert to have been *non compos* when he killed his man, because at the time he was calm, collected, indifferent, and deliberate, or because he was impulsive, excited, passionate, and revengeful. The same facts determine experts for the defense to one conclusion, which commit those for the prosecution to its opposite. And these displays of scientific balderdash, converting court rooms into show rooms, to which crowds throng for amusement and diversion, lengthen into weeks and months, burden the public treasury with enormous expense, frequently bankrupt and always tend to the protection of the offender. The case finally goes to a jury, exhausted in body and bewildered by a fantastic medley of fact, fancy and opinion, in which the homicide and its attendant circumstances are lost to the understanding. They acquit, or stumble upon some sort of compromise verdict, announce it, and thank God for their release from an imprisonment lasting longer than the term of an ordinary convict. These things be travesties upon justice, for which public opinion rightly or wrongly holds our profession largely responsible, and which must give way to saner and sounder methods, if the law is to perform its normal functions and justice be speedily, effectually and impartially administered.

"That sentiment which charges the bar with responsibility for the development and persistency of these conditions is not altogether erroneous, since we have not as a class done much more than discuss them.

"Of one thing the average layman is convinced, as to the situation. It is that change and simplification will come when the bar resolves that it shall come. Who shall say that he is mistaken or that we cannot if we will storm and capture and destroy the citidal of technical procedure, and make clear the pathway to the inner temple? And if we can do this, can we escape the verdict of recreancy to duty which our fellow men will surely record against us if we longer postpone its accomplishment?

"I do not undervalue the good which our associations are doing and have done. They are indispensable agencies in promoting the welfare and influence of the bar, in effecting many needed changes in the body of our laws, in establishing and enforcing compliance with high standards of honor and conduct. But I do affirm that our first and highest purpose should be to strive to make the administration and enforcement of the laws as simple, summary, swift and inexpensive as the safeguards of the constitution, designed to protect the citizen and prevent the miscarriage of justice, will permit.

"The English bar faced and fought this problem nearly forty years ago. The reformed procedure of Great Britain then established has proven most effective. Its basic principle was that of the New York civil code; a sacrifice of form to substance. Unlike the latter, it has been administered along the same principle. Pleadings are confined to complaint and answer. The case is at issue when the latter is filed, and the court takes that part in the trial, whether in discussing fact, limiting the time of trial, or confining examination and cross-examination of witness to matters strictly relevant, which is essential to the prompt and proper disposition of cases. As a result, the courts are up with their dockets. Litigants need not wait for years with that 'hope deferred which maketh the heart sick,' for trials which, when reached, are as apt as otherwise to witnesses dispersed, the defendant bankrupt, or the counsel dead and gone. Lord Justice Bowen, nearly a quarter of a century ago, could say

with truth of England's judicial system that 'it may be asserted without fear of contradiction that it is not possible in the year 1887 for an honest litigant in her Majesty's court to be defeated by any mere technicality or a slip or a mistaken step in litigation. * * * Law has ceased to be a scientific game that may be won or lost by some particular move.' No greater eulogy of a nation's justice is conceivable. Its jury system had not fallen to the low standards of our own, and therefore needed little attention. With fewer judges than the state of Illinois, England's judicial system transacts the business of forty million people, and does it cheaply, speedily and successfully. Criminals are tried long before their offenses have been forgotten by the public. The judge is properly permitted to comment upon the witnesses and the testimony in his instructions to the jury. He is not, as with us, on trial himself, nor compelled to tread on eggs at all times, breaking none on peril of reversal. Her courts are not arenas for the bouts of gladitorial experts, expatiating upon brainstorms and other phases of *dementia criminorum.*

"Appeals in criminal cases should not be abolished with us, but they can be made far less frequent by confining reversals to errors of substance affecting the charge itself and brushing aside the rubbish of technical refinements of procedure. Honest men who can qualify as to impartiality and not related by blood or marriage to defendant or prosecutor should not be rejected from the panel. Any plain description of the offense in the indictment or information should be sufficient. And the judge should be given the power to comment upon fact as well as law in charging the jury. Above all these things, criminal trials should follow the commission of the offense charged without delay. Prisoners are entitled under our constitution to speedy trials, but nowadays they seldom desire it. This wise provision was designed as well for the commonwealth as the citizen, and should find constant and widespread application.

"The expert when needed should be selected by the court and paid by the state. Sworn opinions, the subject of bargain and sale in the judicial markets, stand low, and justly so, in public estimation. The expert of the day aborts justice and debauches science. Many, perhaps the most of them, are men of deservedly high repute, learned, honest and intelligent. But even they sometimes conflict hopelessly; while the intrusion of the remaining element, the professional expert, with views and conclusions made to fit all interests and emergencies, naturally demoralizes the understanding of men. The hypothetical question should be sent to the musty limbo of things antiquated, useless and ridiculous. If a defendant is or was *non compos mentis* the fact should be apparent. It is doubtless true that in nine cases out of ten his insanity is purely hypothetical, which may account for that method of establishing it. But the facts underlying the defense concern the prisoner. They relate exclusively to himself, not to the imaginary character which biography reads like the crusade of Don Quixote, giving the medical expert a license he would hesitate to exercise in a concrete instance.

"Scientific testimony is essential in many matters beyond the pale of the physician and surgeon. Opinions and conclusions then given are not in general founded upon hypothesis, but upon examination, research and experience, involving actual conditions and directly referring to them. Mining and patent controversies are common illustrations of the fact. The expert in these lines occupies, generally speaking, a higher level than his medical colleague, and doubtless because of his testimony is more direct, and less liable to those con-

flicts and divergencies of conclusion, which characterize the criminal inquisition. This line of testimony, now so discredited, but withal so essential at times to the ascertainment of truth, can be easily rescued from its low estate and made efficient and reliable by the simple process of selection of experts by the court. Those so appointed become thereby officers of the law; not partisans of the litigant employing them.

Annual Meeting of Juvenile Court Conference.—The second annual meeting of the Juvenile Court Conference of the Middle Western States was held in Indianapolis, Ind., November 9, 10, 11, 1910, and was attended by delegates from the states of Colorado, Illinois, Michigan, Indiana, Ohio, Kentucky, Tennessee, and one delegate from Australia. It was significant of the wider interest in the delinquent, dependent and neglected child that the State Federated Woman's Clubs of Illinois, Indiana and Kentucky sent delegates. There was also a delegate from the Police Probation Officers' Association of Chicago, probably the first instance of the presence of a police officer in a convention of juvenile court workers. There were also truant officers from Indiana, Ohio and Michigan.

The first subject upon the program is indicative of the wider view that is being taken of the delinquent and dependent and neglected child problem, viz., "The Social Significance of Juvenile Court Statistics,"—their revelations as to the efficiency and the deficiencies of our educational systems, as to child labor, as to home conditions, as to the need of playgrounds and recreational facilities, as to the social evil, etc. It was pointed out that there is, perhaps, no institution dealing with the social problems of any community better able to furnish a true insight into the social needs of a community than the juvenile court; that as an agency for checking the increase of juvenile faults, immoralities and crimes and the increase of dependency and neglect, the juvenile court is totally inadequate if it confines its activities to handling the cases that come before it, and that, in view of this fact, the court must necessarily engage in various constructive, preventive activities wherever these agencies are not already organized in the community. For example, the street trades, as carried on by some three thousand children in Cincinnati, was found to be a serious menace to the morals of these boys, and that large numbers of them were continually brought into the juvenile court for serious offenses. To combat the evil influence of the street the News Boys' Protective Association was organized by the court, with the result that it is an extremely rare instance now for a newsboy to be brought into the juvenile court for any offense. This association has now a membership of 2,900 boys, has a paid secretary, a club house, gymnasium, baths, reading and game room, band, etc. In general, the idea was brought out that the chief emphasis should be laid upon preventive activities and that the court should, if not actively organize and direct these activities, at least keep continually before the public and before organizations dealing with social and educational problems the facts which their statistics reveal.

The other half of the program was taken up with a discussion of the juvenile court of the rural districts, the need for better organization, of securing better probation officers and especially the tremendously important factor they might become in constructive social work in the rural counties. Considerable attention was also given to the problem of truancy and the need for more attention being paid this fundamental form of so-called delinquency.