

Fall 1940

## Current Notes

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## CURRENT NOTES

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**Arrest Law**—August 5, 1940, Professor Sam Bass Warner of Harvard Law School made a report to the Interstate Commission on Crime dealing with certain changes in the law of arrest which will lead to greater efficiency in the administration of justice and to reducing the hardships which confront persons suspected of crimes, particularly petty offenses. Several of these changes are practiced today by many American police departments, though usually without legal authority. The forces which have led to a divergence between the law and present-day police practices and the importance of legalizing certain of these practices were discussed at length in an article: "Investigating the Law of Arrest," which appeared in the February, 1940, issue of the American Bar Association Journal, 26:151.

In his report Professor Warner set out proposed and tentative changes in the law, followed by an explanation of each change. Moreover, he incorporated a discussion of the probable constitutionality of his laws. The laws are reprinted below and Professor Warner invites the comments of the readers of this Journal.

### *"Section 1. Questioning Suspects.*

A peace officer may detain for questioning any person outdoors or in a public place whom he has reason to suspect is committing, has committed or is about to commit a crime, and may demand of him his name, address, business abroad and whither he is going. A person so suspected who does not satisfactorily identify himself and explain his actions may be detained for further identification and investigation for a period not exceeding two hours, at the end of which period he shall be released unless arrested and charged with a crime. Such detention, examination and investigation shall not constitute an arrest."

### *"Section 2. Frisking for Weapons.*

A peace officer may search for a dangerous weapon any person he is questioning or about to question concerning any crime or suspected crime, whenever he reasonably believes that he would be in danger if the person he is questioning, or about to question, had a dangerous weapon. If the officer finds a dangerous weapon, he may keep it until the questioning is over, when he shall either return it or arrest the person from whom he has taken it."

### *"Section 3. Arrest Without a Warrant.*

A peace officer may without a warrant arrest a person, when

(a) The officer has reasonable ground to believe that a misdemeanor has been or is being committed in his presence or that a felony has been or is being committed, whether in his presence or not, and reasonable ground to believe that the person to be arrested has committed or is committing it.

(b) The person to be arrested in fact has committed or is committing a misdemeanor in the presence of the officer or in fact has committed or is committing a felony, whether in the presence of the officer or not. If the person arrested is in fact guilty of one of these offenses, it is immaterial that the officer did not believe him guilty or entertained belief in his guilt on unreasonable grounds.

If a lawful cause of arrest exists, the arrest shall be lawful even though the officer made the arrest on an improper ground. When an arrest without a warrant is for a misdemeanor, it may be made at any time within twenty-four hours of the commission of the misdemeanor."

### *"Section 4. Summons Instead of Arrest.*

In any case in which a peace officer is authorized to arrest without a warrant a person for a misdemeanor, he may instead

issue to him a summons in a form and under regulations prescribed by the — Court ordering him to appear in court at a time specified. Wilful failure to appear in answer to such summons may be punished by a fine of not over one hundred dollars or imprisonment for not over 30 days. Upon failure to appear, a warrant of arrest may issue."

*"Section 5. Release of Persons Arrested.*

The officer in charge of any police station may release any person in his station who has been arrested without a warrant:

- (a) without requiring that person to appear in court, when he is satisfied that there is no ground for making a criminal complaint against the person arrested or when the prisoner has been arrested for drunkenness or disorderly conduct, and though guilty, in fact, need not, in the judgment of the officer, be brought before a magistrate; or
- (b) upon that person signing an agreement to appear in court at a time designated."

*"Section 6. Length of Detention.*

Every person arrested shall be released either on bail or as provided in section 5 or shall be arraigned within 24 hours from the time of his arrest, Sundays and holidays excepted, unless a judge of the (—) court for good cause shown orders that he be held for a further period of not exceeding 48 hours."

**A. B. A. Meeting**—The Sixty-third Annual Meeting of the American Bar Association met at Philadelphia, September 9-13, 1940. The Section of Criminal Law held three sessions. The program was filled with interesting subjects:

Tuesday, September 10

10:00 A. M.

**FIRST SESSION**

James J. Robinson, Chairman, Presiding  
*Subject of Session:* Racketeering as a Criminal Law Problem with Special Attention to War Activities and Elections.

*Address:* "How the Federal Government Deals with Racketeering," by O. John Rogge, Assistant Attorney General of

the United States, in charge of the Criminal Division, Department of Justice, Washington, D. C.

*Address:* "How State and City Governments Deal with Racketeering," by Paul E. Lockwood, Executive Assistant to Thomas E. Dewey, District Attorney, New York City.

*Reports of Committees:*

**Federal Election Laws.** Consideration of the resolution for the improvement of Federal Election Laws, referred to the Section by the House of Delegates at mid-winter meeting, with tentative draft of bill. Arthur J. Freund, St. Louis, Mo., Chairman.

**Police Training and Merit Systems.** Honorable Curtis Bok, Philadelphia, Pa., Chairman.

**Sentencing Probation, Prisons and Parole.** Dean Wayne L. Morse, Eugene, Ore., Chairman.

**SECOND SESSION**

**Joint Session of National Conference of Judicial Councils, Section of Criminal Law, Section of Judicial Administration, and Junior Bar Conference**

James W. McClendon, Chairman, National Conference of Judicial Councils, Presiding  
Report of Roscoe Pound, Director of the National Conference of Judicial Councils, on the work of the Conference during the past year.

Presentation and discussion of report on traffic courts, including Justices of the Peace, prepared by the National Conference of Judicial Councils in collaboration with the National Committee on Traffic Law Enforcement and the Automotive Safety Foundation:

1. Introduction by Arthur T. Vanderbilt, Chairman of the National Committee on Traffic Law Enforcement and Chairman of the Executive Committee of the National Conference of Judicial Councils.
2. Traffic Court System by Harry H. Porter, Judge of the Municipal Court of Evanston, Illinois, and Chairman of the Committee on Traffic Judges and Prosecutors of the National Safety Council.
3. Traffic Court Procedure by James J. Robinson, Chairman of the Section of Criminal Law.

4. Traffic Court Administration by Howard D. Brown, former Chairman of the Section of Insurance Law of the American Bar Association.
5. Status and Personnel of the Justice of the Peace Courts by Professor Edson R. Sunderland, Secretary of the Judicial Council of Michigan and member of the Executive Committee of the National Conference of Judicial Councils.
6. Administration of the Justice of the Peace Courts by Ronald J. Foulis, former Chairman of the Junior Bar Conference of the American Bar Association and Chairman of the Junior Bar Conference's Committee for the Study of Justice of Peace Courts.

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The Section of Criminal Law, after the joint session, considered the report of its Committee on Magistrates and Traffic Courts. George A. Bowman, Milwaukee, Wis., Chairman.

Wednesday, September 11  
2:00 P. M.

### THIRD SESSION

James J. Robinson, Chairman Presiding  
Introduction by Gordon E. Dean, Secretary of the Section, Washington, D. C.

Message to the Section of Criminal Law from Robert H. Jackson, Attorney General of the United States.

Address: "The Fifth Column as a Criminal Law Problem," by Francis Biddle, Solicitor General of the United States.

Report: "The Criminal Rules Bill Becomes Law," by Arthur T. Vanderbilt, former President of the American Bar Association, Chairman, and Alexander Holtzoff, Special Assistant to the Attorney General of the United States, Vice-Chairman, Committee on Supreme Court Rules for Criminal Procedure.

#### Reports of Committees:

Procedure, Prosecution and Defense, W. McKay Skillman, Detroit, Mich., Chairman.

Coordination of Law Enforcement Agencies, Earl Warren, Attorney General of California, San Francisco, Calif., Chairman.

Education and Practice, Cornelius W. Wickersham, New York City, Chairman.

Rating Standards and Statistics, Dan W. Jackson, Houston, Tex., Chairman.

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Supreme Court Rules for Criminal Procedure—At the meeting of the Section of Criminal Law, *supra*, the Chairman of the Section, J. J. Robinson, made his report dealing with the activities of the Section during the past year. Of great interest to our readers was his comment upon the legislation making possible court rules of criminal procedure as a substitute for the evolution of criminal procedure through legislation. Prevailing upon our law makers to reform procedure directly has proved to be slow and cumbersome; legislators show little interest in the matter and are hard to move to action. Moreover, they seldom exhibit the knowledge or training necessary for proper changes in the law. Allowing the Supreme Court to change procedural rules has many obvious advantages. Hence, the enactment of a law to have Federal criminal procedure before verdict prescribed by rules of the Supreme Court of the United States is an advance of great significance. If done in the Federal system it can be accomplished in any state. Mr. Robinson's report upon this matter follows. We should add that Mr. Robinson himself should be credited with much of the success of the undertaking.

"On June 29, 1940, the President signed the act which gives to the Supreme Court the power to make rules of procedure for federal criminal cases prior to verdict. The significance of this legislation is so great that it can accurately be said to mark the beginning of a new epoch in criminal law administration in the United States. It is significant in many ways. It shows that Congress is willing to have the Supreme Court do for criminal procedure what the Supreme Court has done and is doing for civil procedure. The new statute makes possible a clear, simple, coordinated and complete federal code based on the best statutory and common law provisions and the best practice as followed in the federal courts and in the state courts. The new act makes possible such cooperation between bench and bar as that which has re-

sulted from the Civil Rules Act. It will promote uniformity in criminal procedure at its best throughout the country. It will be of incalculable value to the states in improving their own criminal procedure. This is especially true in those states, now about twenty in number, which have given to their supreme courts the rule-making power in criminal cases. It is realized by all of us who for many years have worked in state legislative sessions to secure the enactment of bills to improve criminal procedure that this act probably foretells the end of many legislative methods which we have observed—methods which have often sacrificed criminal procedure on the altar of log-rolling politics, of haphazard tinkering, of ignorance, of prejudice and even of deliberate fraud. The rules of court which will be prepared by the Supreme Court and by the state courts, with the aid of the advisers from the bar, may confidently be expected to 'do just what is needed,' in the words of former Attorney General Mitchell, because such rules will be the product not merely of 'research' and of 'idealism,' but of 'long years of practical experience in the administration of the law.' There is every reason to believe that under the new statute there will be provided a federal code of criminal procedure which will serve to guarantee with greater certainty than at any previous time that criminal justice throughout the United States will be just and will be equal to all individuals, and equal as between the individual and the government.

The new statute and its enactment are the work of many hands. The President, the Attorney General and his predecessors, and leading Senators and Representatives have given the proposal their generous and effective support. The American Bar Association, through the Section of Criminal Law, has made the proposed legislation one of its chief interests and objectives since July, 1938. The activities of the Section in support of the proposal from that time to July, 1939, were stated briefly in the chairman's report last year. Since that report was made, the Section's activity has continued without abatement. The Section is especially indebted to the chairman of its Committee on Supreme Court Rules for Criminal Procedure, Honorable Arthur T.

Vanderbilt, and to the vice-chairman, Honorable Alexander Holtzoff, for their able and faithful services in charge of the legislation for the Section. Other members of the committee and of the Section also have earned the appreciation and thanks of the Section and of the American Bar Association by their work in behalf of this legislation."

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**Federal Election Laws**—The Committee on Federal Election Laws, in its report last year (printed Program and Reports of the Section, 1939, pages 33-36), discussed the inadequacy of the federal election laws. The chairman of the committee, Arthur J. Freund, caused to be presented at the mid-winter meeting of the House of Delegates, on January 9, 1940, a resolution that the American Bar Association recommend to Congress that it enact legislation to remedy this deficiency in the federal laws. The House of Delegates referred the resolution to the Section of Criminal Law. The resolution follows:

Whereas, The criminal laws of the United States do not extend to the adequate protection and enforcement of the rights of citizens against fraudulent and wrongful interference with the orderly and honest conduct of the nomination and election of federal officers, for the following reasons: (1) the only federal legislation on the subject of fraud in elections, aside from the Corrupt Practices Act, is the conspiracy section which declares it to be an offense to conspire to injure or intimidate any person in the exercise of a federal constitutional right (18 U. S. C. A., par. 51); (2) there is no federal statute specifically directed against fraudulent interferences with the election of federal officers such as the impersonation of voters, multiple voting, buying or selling votes, or against conspiracy fraudulently to affect the vote for the President or the Vice-President of the United States; (3) there is no federal statute against fraudulent interference with the nominations of candidates for the offices of United States Senators and of members of the House of Representatives; and (4) there is no federal statute against fraudulent interferences with an election upon amend-

ments to the Constitution of the United States; and

Whereas, Elections are to be held in the present year by the citizens of the United States in which they will select a President, a Vice-President, United States Senators, and Representatives in Congress; therefore be it

*Resolved*, By the American Bar Association that the Association recommend that Congress enact legislation extending the scope of the present criminal law provisions of the federal election laws to cover specifically such fraudulent interferences as those enumerated in the first paragraph; and that the Association authorize and direct the officers of its Section of Criminal Law and the other appropriate representatives of the Association to present this matter to the members of Congress and to work for the enactment of the necessary legislation.

The committee prepared a bill for the consideration of the Section. The bill appears below:

#### A BILL

To Enforce the Rights of Citizens of the United States in the Nomination and Election of Senators, Representatives, Electors, the President and Vice-President of the United States, and in any Election to Amend the Constitution of the United States.

*Be it enacted* by the Senate and House of Representatives of the United States of America in Congress assembled,

That this act may be cited as the "Federal Elections Act."

Section 2. The term "election" as used in this act shall mean

(a) any primary election, or nominating election, or general election whereby persons are selected, nominated, or elected by and under the authority of the Constitution and the laws of the United States or by and under the authority of the Constitution or the laws of any State or Territory for the nomination or election of any United States Senator, Representative to the Congress of the United States, Elector of the President or the Vice-President of the United States, or the President of the United States, or the Vice-President of the United States;

(b) any election held by and under the

authority of the Constitution and laws of the United States, or by and under the authority of the Constitution or laws of any State to vote upon any amendment to the Constitution of the United States.

The term "voter" as used in this act shall mean any person lawfully entitled by and under the Constitution of the United States and the laws of the United States or by and under the Constitution or the laws of any State or Territory to participate in and vote at any election.

The term "officer of election" as used in this act shall mean any judge, clerk, canvasser, commissioner or other person whose duty it is or shall be to receive, count, canvass, certify, register, supervise, or report, or give effect to the vote of any voter at any election, or the registration or qualification of any voter for any election.

Section 3. It shall be unlawful for any officer of election

(a) knowingly, willfully or fraudulently to refuse or omit to receive, count, certify, register, report or give effect to the lawful vote of any voter; or

(b) knowingly, willfully or fraudulently to give or attempt to give effect to any false or fraudulent vote, or to give or make, or attempt to give or make, any false count, certificate, document, report or other false evidence in relation to any election.

Section 4. It shall be unlawful for any person

(a) by force, bribery, reward, menace, threat, intimidation, trick or knowingly, willfully or fraudulently to hinder, delay, prevent or obstruct any voter from doing any lawful act required to be done to qualify him to vote or from lawfully voting at any election; or

(b) by any such means or knowingly, willfully or fraudulently advise, aid or abet, maintain, or procure or attempt to maintain or to procure the placing, registration or enrollment of any false, fraudulent, unlawful or fictitious name or names upon the election rolls, poll books, books or records of registration or election, or any other records of registration or election used or intended to be used at any election as a list or designation of lawfully qualified voters; or

(c) by any such means or knowingly, willfully or fraudulently to compel or in-

duce, or attempt to compel or induce any officer of election, to receive the vote at any election of any person not lawfully entitled to vote at such election; or

(d) by any means or knowingly or willfully or fraudulently to counsel, advise, induce or attempt to induce any officer of election to give or make any false count, certificate, document, report or other false evidence in relation thereto, or to refuse or neglect to comply with his duties prescribed by law at any election, or to refuse the vote of any person lawfully entitled to vote in such election, or to violate any law regulating such election; or

(e) by any such means or knowingly, willfully or fraudulently to obstruct, interfere with, delay or hinder in any manner any officer of election in the lawful discharge of his duties at any election.

Section 5. It shall be unlawful for any person, at any election, falsely to impersonate a voter or other person, and vote, or attempt to vote or offer to vote in or upon any name not his own, or to vote, or attempt to vote, or offer to vote, in or upon the name of any other person living or dead, or in or upon any assumed or fictitious name; or knowingly, willfully or fraudulently to vote more than once at the same election, except as authorized by law, or knowingly, willfully or fraudulently to vote, or attempt to vote, or offer to vote in an election or at a place where he is not lawfully entitled to vote.

Section 6. If two or more persons enter into an agreement, confederation, or conspiracy to violate any of the foregoing provisions of this act, and do any overt act toward carrying out such unlawful agreement, confederation or conspiracy, such person or persons shall be punished in the manner as hereinafter provided by this act.

Section 7. The sole purpose of this act is to secure to the citizens of the United States the honest and lawful conduct of elections which affect the selection of United States Senators, Representatives to the Congress of the United States, United States Presidential and Vice-Presidential Electors, the President and Vice-President of the United States, and the adoption or rejection of proposed amendments to the Constitution of the United States. None of the provisions of this act shall be deemed

or construed to apply to elections other than such elections, or to any acts or conduct of election officials or other persons which do not affect the nomination, selection or election of any United States Senator, Representative to the Congress of the United States, United States Presidential or Vice-Presidential Elector, or the President or Vice-President of the United States, or the adoption or rejection of any amendment to the Constitution of the United States.

Section 8. Any person committing any offense defined in this act shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

Section 9. If any provision of this act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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Prisons—At the 1940 meeting of the Section of Criminal Law, American Bar Association, a report was made by the Committee on Sentencing, Probation, Prisons and Parole, Wayne L. Morse, Chairman. It has cooperated with the National Probation Association in promoting its model act for a state-administered adult probation and parole system. Also, it has advocated the adoption of the two tentatively proposed model Youth Correction Authority Acts drawn for the American Law Institute. The report is too long to be reprinted in full but the part dealing with prisons deserves direct quotation:

“Your Committee on Sentencing, Probation, Prisons and Parole has elected to face two major questions with reference to prisons:

1. What is the function of penal institutions in the administration of criminal law?
2. How well is that function being performed today?

A handful of venturesome persons will assert their readiness to abandon all thought of punishment in dealing with criminals, but society as a whole continues to believe that crime must be met by pun-

ishment—most frequently by imprisonment.

However, this Century has seen significant changes in our concepts and methods of penal administration as the result of new knowledge about human nature and its control. Society appears always to have felt the need to justify punishment, and it is here that these changes appear. Retribution, expiation, deterrence, moral reformation, and public protection—each has held the center of the stage at one time or another and each is still invoked from time to time as circumstances seem to demand. For example, let there be a brutal murder or kidnaping and the public will cry for vengeance, while an epidemic of minor offenses usually results in more severe sentences 'to deter others and break the back of this crime wave.' At first glance it would seem that the justification for punishment varies freely with the offender and the circumstances of his offense. However, a more careful study of the recent literature of penology, especially the products of outstanding penal administrators, shows a consistent emphasis on a new point of view which holds that the best justification of punishment is the protection of the public through the rehabilitation of the individual offender.

Keenly alive to the fact that ninety-seven per cent of those who go to prison return to society, modern prison officials see the necessity of making the period of incarceration an opportunity to prepare each prisoner for the day when his confinement is over. This new point of view endows the prison with the function of carrying out careful, individualized study, treatment, and training of offenders, using the knowledge and techniques of medicine, psychiatry, psychology, education, vocational guidance and training, religious instruction, recreation, and every other discipline which contributes to the understanding and management of people. At the same time it demands the elimination of practices and conditions which tend to produce physical, mental, or moral deterioration. Brutal or degrading punishments, idleness, overcrowded living quarters, and similar obstacles to self-improvement are condemned by modern penal theory.

Your committee finds little dissent from this point of view among the students and practitioners of penal administration, but it does find widespread departures in practice.

A statement that 100,000 penitentiary prisoners out of 162,000 were not being subjected to any conscious, organized rehabilitative efforts of any kind was not challenged by the American Prison Congress before whom it was made.

Volume V of the *Attorney General's Survey of Release Procedures*, which deals with penal and correctional institutions, finds that of 136,957 male prisoners in the institutions studied 30,000 were in camps which offered no rehabilitative facilities, 40,000 were housed in quarters so overcrowded as to endanger health and morals, 55,000 were confined in idleness, and only 35,000 had the benefit of any organized educational activities.

The reliable and comprehensive reports of the Osborne Association, in its successive *Handbooks of American Prisons and Reformatories* and its *News Bulletin*, show that only here and there throughout the country has modern thought been put to practice. For the most part our prisons and reformatories are operated much as they were before the new concepts and techniques were known.

The custodial job is reasonably well done. Reports of the Census Bureau for 1938 show only 1,272 escapes out of an average population of approximately 155,000 prisoners. Practically all of them were recaptured within a short time. The rehabilitative job is, however, not being so well done. More than fifty per cent of those in prisons and reformatories today may be expected to return on the basis of present figures on recidivism. In some states the percentage of repeaters runs as high as seventy per cent. Pennsylvania, for instance, reported that 61 per cent of the men received in its penitentiaries during 1933 had previously been committed. In Maryland 67.1 per cent of the male prisoners committed during 1933 on felony charges had previously been in prison. Similar situations exist in most of the states, which clearly indicate that once a man has been sent to prison, there is hardly an even chance that he can be assimilated again in



society and will forever remain a public charge, and what is more disturbing he will probably remain a menace to law and order.

Your committee finds a number of contributing causes to this failure of the law to prevent recurrence of crime among known offenders. In a few cases the fault rests on administrative officials who pay "lip service" to the new objectives but are content to confine their efforts to preventing escapes. More often the fault lies elsewhere. Partisan politics have prevented progress in penology in many jurisdictions by making the prison a dumping ground for the spoilsman. Here subsistence appropriations have held some states back. Capital and labor have joined forces to deprive prisoners of the opportunity to keep themselves physically and mentally abreast of modern industrial methods by performing constructive labor while in an institution.

None of these obstacles could stand in the face of an aroused and informed public opinion and your committee urgently recommends that the members of the American Bar Association endorse the modern principles which penologists have accepted and use their influence as lawyers and as citizens to see that they are practiced in every state.

It further recommends that local bar associations and individual members work for legislation providing the following elements of a modern penal system wherever such legislation is not now in force:

1. The abolishing of partisan political control of penal affairs.
2. Centralized administration and supervision of penal and correctional activities under professional direction.
3. The application of the merit system to all personnel employed in prisons, reformatories, and other penal or correctional institutions and agencies.
4. Adequate appropriations to support programs of classification, treatment, and training.
5. Appropriations to replace or supplement overcrowded, unsanitary, or otherwise inadequate institutions. Such appropriations should be devoted, in so far as practicable, to the

construction of medium and minimum-security units.

6. A full state-use market for the products of prison industries.

Your committee recommends that each local bar association form a special committee or subcommittee on penal and correctional institutions whose duty it will be:

1. To study the administration of jails, lock-ups, and prisons.
2. To urge periodic Grand Jury investigations of questions touching upon the administration of penal institutions, the health and sanitary conditions, and disciplinary methods.
3. To make more frequent use of contempt proceedings against those who are responsible for permitting escapes, tolerating the operation of "Kangaroo Courts" and granting of special privileges to prisoners.
4. To urge the bar to give greater attention to problems of penology and criminology."

**Traffic Court Recommendations**—Following a year and a half of study the Subcommittee on Courts of the National Committee on Traffic Law Enforcement has issued a report and recommendations prepared by the secretary, George Warren. The work of Mr. Warren included the use of questionnaires to all attorneys-general, 1500 traffic court judges and 12,000 justices of the peace and, in addition, personal investigations and conferences in forty-four states. The recommendations were submitted in September, 1940, to the National Conference of Judicial Councils and to three sections of the American Bar Association—Criminal Law, Judicial Administration, and Junior Bar Conference. The summary of recommendations was as follows:

## THE TRAFFIC COURT SYSTEM

### *Traffic Laws*

1. Traffic laws with inherent defects should be revised and those which are unenforceable or unnecessary should be repealed.
2. Traffic statutes should be founded upon the "Uniform Vehicle Code" and the "Model Traffic Ordinances" with only regulations purely local in na-

ture left to local ordinance. However, an exception should be made where this would result in ousting local courts from jurisdiction to try traffic violations.

#### *Traffic Courts*

3. All courts should treat traffic cases apart from their other business.
4. Special courts for traffic cases are necessary when the number of cases reach 7500 per year with a violations bureau in operation, and 15,000 cases per year when there is no bureau.
5. The ideal traffic court organization would be on a state basis with various district courts, and with circuits operating from each district.
6. Physical courtroom conditions should be improved as to facilities, arrangements, cleanliness, and appearance.
7. The taxing of courts costs as a separate penalty should be eliminated, and the fine assessed in one sum. If costs are included, they should be in a reasonable amount.

#### *Violations Bureaus*

8. Violations bureaus are to be used only when the number of traffic cases make it impossible for the court to properly dispose of them.
9. The basis for all violations bureaus should be a signed plea of guilty and waiver of trial.
10. Schedules of fines charged at the violations bureau are not to be alterable.
11. The bureau should handle the least hazardous violations and should deal with moving offenses only when they respond to treatment outside the courtroom. Major traffic law violations should never be handled in a violations bureau.
12. Assuming conformity with the recommended basis for violations bureau jurisdiction, the payment of fines by mail, properly safeguarded, is recommended.
13. Fines assessed at the violations bureau should be in average amounts used by the judge for the same offenses, and should be scaled higher for repeaters.

#### *Traffic Judges*

14. Traffic judges should recognize the fact that a knowledge of traffic laws, traffic policing and engineering is necessary in addition to a legal background and should aim to obtain an understanding of these factors.
15. Traffic judges should not be selected by local authority or on a localized basis where appointment or election on a wider scale is possible.
16. The selection of alternates for traffic judges should be safeguarded.
17. Where more than one magistrate is available for the traffic bench, it is recommended that one judge be assigned to that post permanently or for a long period, rather than the use of a system of rotation of judges.
18. Traffic judges should be under the supervision of a chief magistrate who should be given regulatory powers.

#### *Prosecutors*

19. It is recommended that the title "Prosecutor" be eliminated in favor of "Public Attorney" or "Public Solicitor" or a similar term.
20. "Prosecutors" should be assigned to traffic courts for aid in the disposition of cases.
21. Where the information on the ticket or complaint does not afford the prosecutor sufficient detail, the arresting officer should be required to furnish him with an additional report.
22. Prosecutors should not be used for the purpose of deciding whether a traffic violation should be brought to trial.

#### *Defense Counsel*

23. Bar associations should interest themselves in ascertaining what the function of a lawyer in the traffic courts should be, and in encouraging the maintenance of that standard.

### TRAFFIC COURT PROCEDURE

#### *Procedure*

24. Preliminary hearings in minor traffic cases should be eliminated.
25. Summonses and tickets should be returnable on particular days assigned to officers.

26. Where the volume of cases is large the time of appearance should be staggered according to the type of offense.
27. Complaints other than tickets are unnecessary and should not be used in traffic cases where the officer witnessed the violation.
28. Dockets should be kept by the court clerk's office and traffic cases should be kept in a separate docket.
29. Dockets should be in duplicate, the disposition to be marked on the original by the judge at the time of trial.
30. Each defendant should be treated as a single case regardless of the number of charges against him.
31. Appearances should be enforced by the service of warrants through the police department and by additional fines.
32. The traffic court judge should be made solely responsible for the granting and use of continuances.
33. Continuances should not be used for the purpose of allowing violators an opportunity to obtain the money needed for the fine. Instead, surrender of the offender's license until payment is made is recommended.

#### *The Jury*

34. The use of juries in trials for summary or minor traffic offenses should be eliminated.

#### *Appeals*

35. There is need for the study and revision of the appellate procedure available to persons convicted of traffic offenses.

### TRAFFIC COURT ADMINISTRATION

#### *Conduct of a Traffic Court*

36. There is a general need for higher standards of decorum and courtroom procedure in traffic cases.

#### *Punishing the Traffic Violator*

37. Juvenile traffic violators should be treated by traffic courts except where a behavior problem is involved.
38. Rigid and set fines (as distinguished from flexible standards) for the various traffic violations are to be discouraged.
39. The utilization of effective methods other than fines and sentences for the

punishment and treatment of traffic violators, should be encouraged.

40. The primary aim of the traffic court should be to impress defendants with the need for traffic law observance rather than to penalize.

#### *The Fix*

41. Reduction of charges in traffic cases should be a judicial power and exercisable only by the judge.
42. Judges should hold police officer, prosecutor, or both, strictly accountable for deliberate attempts to weaken the case against the defendant.
43. Clerical procedure should be revised for the purpose of permitting audits, allocating responsibility and providing checks on the handling of cases before they are tried.

#### *Records*

44. Traffic Judges should be furnished with the traffic record of the defendant by the police department, to be used only after deciding guilt in the present case, for the purpose of assessing the punishment.
45. Drivers' records should be state-wide for maximum effectiveness and made available through police departments to traffic courts throughout the state.
46. Traffic courts should keep daily cumulative records, broken down by division into the common offenses, and published at least annually.

#### *Conviction Reporting*

47. Bar associations and other interested groups should interest themselves, where necessary, in the problem of the failure of judges in traffic courts to report convictions as required by state law.

### THE JUSTICE OF THE PEACE

#### *The Justice of the Peace Court*

48. The justice of the peace system is outmoded and its plan of organization ineffective for good traffic law enforcement. It is recommended that the justice of the peace should be replaced for the trial of traffic cases by a state-wide system of regular courts with trained personnel functioning on a cir-

cuit basis from centrally located seats and under the supervision of a chief judge.

*Qualifications and Supervision*

49. Minimum qualifications should be prescribed for candidates for the office of justice of the peace.
50. The basis governing the number and location of justices of the peace should be revised to allow the existence of a reasonable number of officers and an efficient distribution.
51. Adequate supervision should be provided, and regular inspections made of all functioning justice courts.

*The Fee System and Salaries*

52. The present fee system in use in most states as a method of remuneration for justices of the peace, should be abolished and replaced by a means of com-

THE ADMINISTRATION OF JUSTICE  
IN THE JUSTICE COURT

54. Courtrooms should be furnished to justices in the various localities.
55. The choice or selection of a particular justice court by the arresting officer should not be permitted if the practical necessity therefor is removed.
56. The practice of taxing costs should be eliminated.
57. All justices should be furnished with, and required to keep, satisfactory dockets, financial and other records, and should be obliged to report to a county or state office at least monthly.

Prison Population—William Lane Austin, Director of the Bureau of the Census, announced on August 13, 1940, that the number of prisoners in the prisons and reformatories of 46 states, the District of Columbia

MOVEMENT OF POPULATION IN STATE AND FEDERAL PRISONS AND  
REFORMATORIES, BY SEX: 1939 AND 1938

	1939			1938		
	Total	Male	Female	Total	Male	Female
Prisoners present January 1.....	160,285	154,826	5,459	152,654	147,375	5,279
* Received during year.....	87,922	83,719	4,203	88,087	84,034	4,053
Received from courts.....	66,024	62,629	3,395	68,326	65,067	3,259
Conditional release violators returned....	5,900	5,633	267	5,964	5,677	287
Returned from escape.....	1,134	1,075	59	1,354	1,284	70
Transferred from other institutions.....	12,858	12,723	135	12,178	11,930	248
Other admissions.....	2,006	1,659	347	265	76	189
Discharged during year.....	86,821	82,753	4,068	80,923	77,026	3,897
Released unconditionally .....	27,126	25,991	1,135	25,427	24,271	1,156
Sentence expired .....	26,627	25,506	1,121	25,017	23,875	1,142
Pardoned .....	170	164	6	152	143	9
Commutation .....	329	321	8	258	253	5
Released conditionally.....	40,436	38,164	2,272	38,779	36,608	2,171
Paroled .....	27,948	26,204	1,744	27,684	25,951	1,733
Conditional pardon.....	1,663	1,610	53	1,723	1,653	70
Other conditional release.....	10,825	10,350	475	9,372	9,004	368
Executed .....	128	128	—	121	119	2
Death, except execution.....	962	933	29	990	970	20
Escape .....	1,168	1,111	57	1,272	1,213	59
Court order.....	1,980	1,848	132	481	455	26
Transferred to other institutions.....	14,239	14,017	222	13,568	13,271	297
Other discharges.....	782	561	221	285	119	166
Prisoners present December 31.....	161,386	155,792	5,594	159,818	154,383	5,435

pensation not dependent in any manner upon the decision in the case.

53. Where practical, fair and adequate salaries should be given justices of the peace.

and the Federal Government increased during the calendar year 1939 from 160,285 to 161,386, an increase of 0.7 percent.

The Census figures do not include prisoners in Alabama and Georgia institutions.

STATES OPERATING UNDER COOPERATIVE UNIFORM CRIME CONTROL  
LEGISLATION OR COMPACTS

STATES	Fresh pursuit	Extradition	Out-of-state witnesses	Interstate parole and probation supervision		Firearms	Narcotic drugs
				Enabling legislation	Signatory to compact		
Alabama.....		★				★	★
Arizona.....	★	★	★	★	★		★
Arkansas.....		★	★	★	★		★
California.....	★	★	★	★	★	★	★
Colorado.....	★		★	★	★		★
Connecticut.....	★		★				★
Delaware.....	★	★	★	★	★		★
Florida.....							★
Georgia.....							★
Idaho.....		★	★		★		★
Illinois.....				★	★		★
Indiana.....		★	★	★	★	★	★
Iowa.....				★	★		★
Kansas.....	★	★	★		★		★
Kentucky.....							★
Louisiana.....	★		★	★	★		★
Maine.....	★	★	★	★	★		★
Maryland.....	★	★	★	★	★		★
Massachusetts.....	★	★	★	★	★		★
Michigan.....	★	★	★	★	★		★
Minnesota.....	★	★	★	★	★		★
Mississippi.....			★				★
Missouri.....							★
Montana.....	★	★	★	★	★		★
Nebraska.....	★	★	★	★	★		★
Nevada.....			★				★
New Hampshire.....	★	★	★	★	★	★	★
New Jersey.....	★	★	★	★	★		★
New Mexico.....	★	★	★	★	★		★
New York.....	★	★	★	★	★		★
North Carolina.....		★	★				★
North Dakota.....	★		★			★	★
Ohio.....	★	★	★	★	★		★
Oklahoma.....							★
Oregon.....	★	★	★	★	★		★
Pennsylvania.....	★	★	★	★	★	★	★
Rhode Island.....	★		★	★	★	★	★
South Carolina.....							★
South Dakota.....	★	★	★			★	★
Tennessee.....	★		★	★	★		★
Texas.....							★
Utah.....	★	★	★	★	★		★
Vermont.....	★	★	★	★	★		★
Virginia.....	★	★	★	★	★		★
Washington.....				★	★	★	★
West Virginia.....	★	★	★	★	★		★
Wisconsin.....	★	★	★	★	★		★
Wyoming.....		★	★	★	★		★
Dist. of Columbia.....	★						
Totals.....	31	30	37	32	33	9	41

The states listed with stars in the table have adopted the model acts, recommended by either the Interstate Commission on Crime or the National Conference of Commissioners on Uniform State Laws, or similar legislation.

A reference to the American Prison Association newly published "State and National Correctional Institutions" discloses that Alabama had 1,817 inmates and Georgia had 915. This would bring the total population for the year up to approximately 163,000.

**Interstate Acts**—In the May-June, 1940, issue of this Journal the Editor prepared a list of states which have adopted one or more of the acts sponsored by the Interstate Commission on Crime. The list as printed was incomplete. So successful have been the efforts of the Commission that it is difficult to keep up to date with the adopting states. The latest publication of the Commission "Handbook on Interstate Crime Control" was circulated during the summer of 1940. In it appeared the following table, which shows further advancement.

**Cincinnati Report**—The 1939 Annual Report of the Division of Police, City of Cincinnati, compiled and published by the Bureau of Records of the Cincinnati Police is a remarkably complete and interesting publication. It includes juvenile arrest statistics, data on traffic accidents and many other subjects of current interest. In the letter of submission to the Director of Safety, Chief Eugene T. Weatherly made

a statement of peculiar interest to readers interested in the offense of gambling. It referred to "bingo" and was as follows:

"Sponsors of charitable entertainment and contribution parties, at which bingo is the chief attraction, have furnished us certified statements of attendance and receipts during the year in accordance with a recommendation of Council. Statistics compiled from these statements seem to establish bingo as a major form of recreation in this city. Attendance at bingo parties was greater than at major league baseball games and Cincinnati is an acknowledged 'baseball town' with a championship team. Although motion picture shows drew over four times as many persons (excluding children) as bingo, bingo players spent almost half the amount paid by 'movie-goers' during the year for their entertainment. The net cost per person for an evening at a bingo social averaged sixty cents, but was only approximately thirty-five cents per person for a picture show.

"During the year, 2,289 bingo parties were held with an aggregate attendance of 2,431,861, an average of 46,766.5 attending 44.0 parties each week. Gross receipts of \$1,924,681.19 were reported for the year, from which, after paying out \$465,721.59 in prizes, a net to the sponsoring organizations of \$1,458,959.60 resulted. Prizes are limited by regulation to 25% of the gross receipts."

OFFENSE CLASSIFICATION	NUMBER OF OFFENSES REPORTED PER 100,000 INHABITANTS								
	Entire State (Pop. 2,563,953)			Rural (Pop. 1,306,337)			Urban (Pop. 1,257,616)		
	1936	1937	1938	1936	1937	1938	1936	1937	1938
All offenses.....	654.6	666.0	754.3	205.8	192.6	248.9	1,120.8	1,157.7	1,279.4
Murder and non-negligent manslaughter.....	1.5	1.4	1.3	1.6	1.1	1.5	1.4	1.7	1.1
Manslaughter by negligence.....	1.2	.4	1.1	1.5	.7	1.3	.9	.1	1.0
Rape—including carnal knowledge....	3.9	2.8	5.0	3.5	2.8	5.1	4.4	2.9	4.8
Robbery.....	30.7	25.8	25.3	12.1	9.2	8.9	50.1	43.0	42.3
Aggravated assault.....	10.7	7.0	6.8	8.0	4.3	4.1	13.5	9.9	9.6
Burglary.....	186.4	156.0	163.9	60.9	55.9	77.5	316.7	260.0	253.7
Larceny—except auto theft—total....	280.9	344.9	428.4	97.9	94.0	116.1	471.0	605.5	752.8
\$50 or over.....	52.6	62.6	66.9	34.6	34.1	43.3	71.2	92.2	91.5
Under \$50.....	228.4	282.3	361.5	63.3	59.9	72.9	399.8	513.4	661.3
Auto theft.....	139.3	127.7	122.5	20.4	24.6	34.4	262.8	234.7	214.1

**Rural and Urban Crime**—In the Annual Report of the Minnesota Bureau of Criminal Apprehension there appears an interesting comparison of rural and urban Crime covering the 3 years 1936-38. Since the State's rural and urban populations are almost equal, using for rural classification places under 2,500 in population, the figures given are of importance in determining the ratio of crime of the country versus the city. The rural data are probably more incomplete than the urban because of offenses occurring in small towns which are reported to local police officers but are not brought to the attention of the sheriff. As a whole, however, it is believed that the differences in crime rates in rural and urban areas are significant.

**Probation Movie**—A motion picture to interpret the juvenile court and probation is now in production and will be ready for distribution this fall, it has been announced by Charles L. Chute, executive director, National Probation Association, New York. The film will be available in the 16mm and 35mm widths to interested agencies throughout the country.

Judges, probation officers and leaders of welfare organizations everywhere have long expressed the need for an interpretive motion picture in the field of juvenile delinquency and crime prevention. Responsive to these requests and mindful of the growing importance of the cinema in helping to create vital public interest in public welfare endeavors, the Board of Trustees of the Association has now undertaken to produce such a film.

The picture will present the work of the

modern juvenile court in its relation to the proper care and treatment of young offenders. Although some of the background factors which stimulate juvenile delinquency will be suggested, particular emphasis will be placed upon the techniques of good procedure from the apprehension of the child through detention, court hearing, psychiatric study, and probation supervision. The story will be that of a boy offender but the problem of girl delinquents will also be recognized.

**Police Convention**—The Convention of International Association of Chiefs of Police was held at Milwaukee, Wisconsin, September 9-12. Although the Year Book published by the I. A. C. P., will contain a detailed description of this convention readers of the Journal may be interested in knowing what special matters were discussed at this meeting. They are as follows: Reorganization in Kansas City; One or Two Men in a Patrol Car?; Overhauling Police Pension Systems; Shall We reduce the Number of Precinct Stations?; A Police Defense Program; Civil Service for Police; Police Training; Foot Patrolmen Still a Factor in Prevention of Crime; Proper Protection for a City's Vital Industries; Suppressing Counterfeiters; Police and Federal Bureau of Investigation cooperation for National Defense; A Board Program for Crime Prevention; Proper Policing of Industries in a Small City; An Effective Public Relations Program; An Evaluation of a Police Radio System; Cooperation Between Police, the Schools, and Civic Groups.—J.I.H.