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Penal Reform News

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CONTENTS

Issued by:

THE PENAL REFORM LEAGUE OF SOUTH AFRICA,
P.O. Box 1385,
PRETORIA.

"Three factors combine to cause criminal actions, as indeed any action of any kind. The first, *is the physical nature of the person who acts; this is primarily the product of heredity, but is affected by environment and by habits that he himself has formed. The* second *is the complex of influence continuously brought to bear on him by Society, in infancy, childhood and adult life. The* third *is his own power of choice. Since there are these three causal factors — Heredity, Environment and Individual Choice, our* remedial *measures must have regard to each of the three. Crime, like alcoholism or phthisis or many other things, is not an inescapable inheritance, but a tendency to it may be inherited, a man's family history may be such that it would be well for him to be on the watch.* Education *is society's best instrument.* Housing conditions *are another part of social environment which is important in this connection. Slums breed a degraded population and keep it degraded. In dark and dirty corners, the anti-social germs lodge and multiply. The best disinfectant is fresh air. Well-planned wholesome towns and cities will be less likely to foster centres of crime as of disease. The* economic factor *counts for even more.* Poverty *is, without question, the chief cause of crime. More than from any other cause, people become criminals because they are pressed by need, and yield to temptation."*

(*Lord Samuel in "Is the Criminal to be blamed or Society"*, 1939.)

Fritz Krause adds to this quotation the following words:

"I believe that every citizen who accepts the correctness of this analysis of the Causes of Crime made by Lord Samuel, will arrive at this irresistible conclusion that, by eliminating the Causes of Crime you must necessarily thereby also eliminate the criminal. This is only plain horse-sense!"

I. PENAL REFORM NEWS — FIFTIETH NUMBER

The present issue of "PENAL REFORM NEWS" provides a good opportunity for a short retrospect and an humble assessment of the work of the past fourteen years, with a view to preparing the task ahead of us. In the correctional field, especially in that part of it which is concerned with long-term policies, no spectacular programme, no breath-taking achievement can ever be expected. Therefore, the consideration of what has been done, and what is before us, must perforce be a sobering experience and a challenge of our right to existence within the developing picture of growing South Africa.

1.

The first thought is one of sincere gratitude to all those who have made this work possible. We see the fine stature of our two first Presidents, who have now been both recalled to Higher Service. Two of our newsletters were entirely devoted to their particular contribution to the development of a true and scientific correctional system in this country. Now, in retrospect, we can better appreciate what these two judicial minds have meant for us, in the recent history of the Union of South Africa. Both were lawyers and judges of the Supreme Court, and the very difference of their outlooks has been for the Penal Reform League a source of great and valuable enrichment in thinking. The one, being an outstanding criminal judge and the co-writer of our criminal law, was able to give us the benefit of his deep and thorough legal approach to the problem of the criminal and the offender in our midst. With his colleagues and members of the Penal and Prison Reform Commission, he placed before the country as a whole a solid and constructive program of reforms, which have already withstood the test of fifteen years of penal thinking and practice. His balanced mind will be found to have contributed greatly to whatever solid work the League has been able to do, and his gracious and cultured personality will remain in our minds forever, with the echo of his charming words when he addressed us in our meetings as "Gentlemen and Gentlewomen". Charles William Henry Lansdown gave us more than a legal and judicial heritage. He gave us the mark of his tolerant, cultured and religious mind. The other one, being the most brilliant barrister of his generation, and a very courageous fighter for what he believed to be the truth, gave us the inspiration of a truly complete independence of thought, as well as an equally complete respect for the full humanity of every man. We owe him, in the perspective of our history, the real start of penal and prison reform, when, in 1939, he delivered his now historical address on "Crime and its Punishment". Frederik Edward Traugott Krause has probably been one of the ablest protagonists in South Africa of the struggle against "man's inhumanity to man". For both these two leaders of our thought in the correctional field we give thanks to Almighty God.

2.

Our second thought of gratitude is for all those who have supported the Penal Reform League financially and given us the

material means of doing this work for South Africa. We think here especially of the few who understood that, in a field like this, it is quite impossible to expect general and generous public response. The consistency of their large support, as well as the perserverance of a considerable number of our ordinary members, has permitted us to reach the present time without ever being in debt. Our first Honorary Treasurer, Mr. H. Britten, and our two present Honorary Treasurers are also largely to be thanked for their most valuable and unselfish services. At the beginning, it was thought that Branches of the League could be formed in the main cities; but it was soon realised that in a welfare organisation which cannot offer practical daily work to its members, such an organisation was "de facto" unworkable. Nevertheless the continuous support of many, especially in Cape Town, has been a constant encouragement to go ahead.

3.

If we now briefly consider what the small impact of our efforts has achieved during the past fourteen years, we will not refer to our national Conferences in 1948, 1953 and 1957, nor to the extent of our publications (49 newsletters and 7 pamphlets), nor to the detailed activity of your Director and his helpers (it may interest our members to know for personal recording that he kept his Prison Chaplaincy and held 1,845 meetings in the prisons since the start of the League); it will be sufficient to record that our principal effort has at last come to some definite results:

In the field of *the treatment of trivial, non-criminal offenders,* we have seen the authorities prepare and present to the Legislature the new Criminal Law Amendment Act (1959) and the New Prison Act (1959) which have implemented to a large extent our recommendations. In principle, the Legislature has rejected the age-long practice of imprisonment of this type of offender.

In the field of *penal and penitentiary policy,* the authorities have now officially accepted the principle of *rehabilitation of the criminal,* along with the traditional principle of punishment. And this is not only a theory. The Department of Prisons has advanced spectacularly towards an implementation of rehabilitation in practice.

In the field of *information to the public* on penal and penitentiary problems, our small periodical has endeavoured to place before all those concerned and interested, the remarkable progress of criminological sciences overseas, and the periodical journeys of your Director to Europe and the United States of America, have permitted him to bring a large amount of valuable information, both by word of mouth in a considerable number of public gatherings, and by the printed word. Anyone who peruses the 49 issues of our penal reform news will see that the lack of information on correctional problems which was so obvious before has been partly changed into channels of adequate and reliable information of the South African public.

In the field of *co-operation with the State and State Departments,* it is natural that we should emphasize the tone of real goodwill and understanding which has always prevailed. The

League is not a pressure group. It deals with the realities of our situation, and tries to apply to the solution of our grave problems all the resources of the brain, the heart and the soul which are available. Always very careful not to be affected by the disease of party-politics, and remaining entirely outside the arena of the party-political struggle, without at the same time accepting compromises of a nature which would hurt conscience, the League has honoured the highest form of politics, which is, as Jacques Maritain puts it, "the art of making possible what is necessary!" We are grateful to think that, in a small way, we may have contributed to restate the claims of *prison personnel* as a most important feature of the plan of rehabilitation; very far-reaching changes have taken place now: conditions of work and pay have been considerably improved and training at the highest level has been encouraged, so that, in a few years time, all superintendents of prisons will be as well qualified in knowledge of modern methods, as they have been in the past in practical experience: two "sine qua non" conditions of a true and scientific correctional system. Perhaps we may add that the constant personal and direct co-operation with the former Directors of Prisons and with the present Commissioner has been one of the most heartening features of our work during the past fourteen years.

4.

If we now look ahead a little, it is obvious that on certain points, we are very far from having achieved what is needed:

Firstly, we have not yet persuaded the South African community that legal, penal and penitentiary measures are inevitably "wisdom after the event", and that the priority of priorities in the field of social struggle against crime is PREVENTION. It seems obvious enough now, after many years in which we have increased the use of the cane and the gallows, that the so-called deterrent aspect of these violent measures is very small. One cannot uproot evil, nor undo an evil or criminal act, by committing the same act on behalf of the community, and that is what the principle of talion does. Evil can only be uprooted by higher forces of the mind and the spirit of man. When the community encourages violence, it cannot teach humanity: in terms of the Bantu proverb, it is like the dog which, having a bone in its mouth, cannot bark. Crime prevention is the first object of the Penal Reform League, and in that respect, we have achieved little. Fortunately, in the new provisions of the Criminal Law Amendment Act, a number of valuable provisions have been introduced, which will help the Courts to think in terms of prevention more than hitherto.

Secondly, the lesson that *"violence meeting violence" does not pay* has not yet been learned. We still use violent means of punishing offenders, and fall victims to primitive thinking on the lines of "sympathetic magic". The League has fully realised that coercion and violence are often inevitable at the time of arrest; but it cannot condone the use of violence in cold blood, after the wrong-doer has been secured and segregated. There is a point where punishment, if it goes on, destroys the very basis of rehabilitation. The number of people caned has grown ten times since

the League started its work; executions of persons sentenced to death have been carried out in two-thirds of the cases, instead of about one-third during over thirty years before. But crimes of violence have been totally unaffected by these measures. Stabbing has increased three times in the last fifteen years, and in the case of women, over four times; serious crime has risen from about 140,000 in 1949 to 215,800 in 1958. Should stern retaliation bring positive results, the League would not resist the facts, but it has been proved by our own statistics that the emotionalists, the sentimentalists who refuse to face facts and to apply their reason and logic to the situation are precisely those who advocate more severity in sentences and more violence in answer to violence. All these figures make allowances for population increase.

Thirdly, *inside the prisons themselves,* there is always the tendency to return to the routine of the past, to the stiff military discipline which has proved inoperative in the attempt to rehabilitate offenders. We know the full value and necessity of discipline, when used, not as an aim in itself, but as a means of ordering a disordered life, and inspired by the discipline of the spirit. In prisons, regulations or "Lydrae" are often considered as the Law itself, which they are *not.* Imprisonment is absolutely necessary for the protection of society in many cases. But modern penology and criminology have established clearly that the only justification of imprisonment for such protection is imprisonment *as* punishment, and not *for* punishment. Complete segregation of hardened criminals does not only work one way in keeping the dangerous man from his fellowmen; it also prevents the criminal from being influenced by the positive influence of his good fellowmen. Therefore prisons must remain open to the full influence of the enlightened warder, of the all-important redeeming influence of religion, of men and women, who must be fully equipped and acceptable to the authorities, and whose regular and continuous teaching can re-shape maimed personalities. The immense strides achieved already by the Department must be encouraged further by a full conviction that no desperado is beyond the grace of God. To capture the mind and the soul of a bad man is infinitely more effective in the process of changing him than any straight-jacket soulless discipline or brutal treatment. It is indeed a great privilege to see that many have now been won over completely to the development of a rehabilitative system. We shall always have crime in our midst, because the community itself is "criminogenous", but we have now a staff which generally understands that no evil man will be changed by retaliation in kind.

Fourthly, the League must go on informing on useful overseas development. Our newsletter is now read by many of our Magistrates, Bantu Commissioners and Social Welfare Officers, who receive it free of charge. We are trying to suggest the creation of a Magistrates' Association in South Africa and of a quarterly or monthly publication like "The Magistrate" in Great Britain. In that respect the very useful account given by Miss Bartha de Blank, who was the Secretary of the Association for many years, is most welcome, and we thank her for it. Our now very wide contact with overseas organisations will be maintained and furthered as much as we can.

Many in the League have felt unhappy about our name. We are not, as we said, a pressure group, always asking for reforms, when reforms have been achieved. We would be better called The South African Correctional Association, if it were possible to reproduce here the American pattern of correctional work. But it is difficult to transfer from one country to another specific types of organisations. We would like to see, nevertheless, a federation of effort in our field, where the Staff of Prisons and Institutions, the Chaplains, and the Voluntary Agencies are federated in their common effort, as is the case in the United States. Criminology and the Penitentiary Sciences are going ahead, and all those concerned with them should unite in a common programme of work. May the coming years give us the practical means of achieving this complete unity of purpose which is so necessary in the complex situation we face in South Africa!

As a last word, in this brief review, we would plead with our members and friends for their suggestions, for their advice and counsel in the development of our efforts. The members of our Executive Committee have been most helpful during the past years, and they have enlarged the scope of the necessarily restricted vision of an individual. In our field where expert knowledge only brings with it a full understanding of how little we know, the wonderful influence of team work meets the case infinitely better than so-called expert knowledge of a few informed men and women. We return to the start of this review and insist upon the fact that the real elimination of Crime is its *prevention* within the community, and for ultimate positive results, the concentration upon all the multi-facetted causes of juvenile delinquency and adult crime. We pray that God's blessing may be upon us as we start a new period in our efforts to obtain as crimeless a community as is possible within the South African set-up, complex and irreductible as it may look because of the basic poverty of so many in our midst, "ad majorem Dei gloriam"!

H. P. JUNOD.

Pretoria,

7th January, 1960.

II. THE MAGISTRATES' ASSOCIATION OF ENGLAND AND WALES

The Magistrates' Association is a voluntary organization consisting of over 10,000 lay justices of the peace in England and Wales.

A justice of the peace in England has wide powers and well over 95% of all criminal cases in England and Wales are heard and disposed of by a little more than 16,000 lay men and women who have been appointed as justices of the peace by the Crown on the advice of the Lord Chancellor. The office of justice of the peace in England is an old one, dating back to the reign of Edward III when the first justices were appointed as keepers of

the peace in 1361. To begin with their duties were both judicial and administrative, but gradually their administrative functions were taken from them, and their judicial duties increased, until at the present time they deal entirely with the overwhelming proportion of criminal cases, only the more serious offences being referred by them to the higher courts.

The justice of the peace requires no legal qualifications for his appointment, although he is advised on matters of law by the clerk to the court who must be a lawyer. Except for some very minor offences a lay justice does not sit alone, and a bench of justices must consist of not less than two, and three is often found a convenient number. A large local authority can apply to the Home Office to have a stipendiary magistrate — a paid lawyer sitting alone — but in fact only a very small number have taken advantage of this power. The metropolitan area of London, however, has stipendiary magistrates who deal with the majority of cases, though its juvenile courts are largely manned by lay justices. Even where a large city or urban area has a stipendiary magistrate, there will be one or more courts manned by lay justices sitting daily at the same time as the stipendiary magistrate in order that the business of the courts may be expedited. In smaller towns courts sit only one or two days a week, and in scattered country areas once a fortnight and sometimes even less frequently.

In addition to sitting in the adult court, a number of justices of the peace chosen by their colleagues sit in the juvenile court to deal with the particularly difficult problems that arise in this jurisdiction. In addition, magistrates or justices — the terms are used synonymously — deal with the complicated questions of separation and maintenance, and county justices are empowered to sit with a legally qualified chairman in courts of quarter sessions where there is a jury, to deal with some of the more serious cases that cannot be dealt with by the magistrates' courts; and with the legally qualified chairman but without the jury they also hear appeals from the lower courts. In general the maximum penalties that can be imposed by magistrates' courts are a fine of not more than £100 or imprisonment up to six months, though under certain statutes these maximum penalties are increased for particular offiences.

Under English law intoxicating liquor may only be sold, with certain exceptions, by persons licensed by justices, and in premises similarly licensed, and each bench of magistrates appoints a licensing committee from among its number to deal with the many matters that arise in this connection.

Magistrates have supervisory powers over the administration of local prisons by means of Visiting Committees elected from among themselves, which, apart from regular visits of inspection, adjudicate on the more serious breaches of discipline that may arise. Central and regional prisons and borstal institutions have Boards of Visitors to perform similar functions, but although a number of magistrates are appointed to serve on these Boards membership is not confined to members of the judiciary.

From the above it will be seen that justices of the peace in England and Wales discharge very onerous and responsible duties. Although they need have no legal qualifications, they are most carefully selected, and the Lord Chancellor in making his recommendations to the Crown, seeks to cover a cross-section of society as well as choosing people who are interested in their fellow-men — most often shown by participation in social work of some sort or another — are conversant with local conditions and who will be able to act judicially.

To people unacquainted with the system it may seem that the administration of justice in the lower courts of England and Wales must be a very haphazard affair, but in fact the system works admirably. Criticisms there have always been, and one hopes they will continue, for criticism helps to keep the machine working efficiently. But the Royal Commission on Justices of the Peace of 1948 reported overwhelmingly in favour of the retention of the present system.

It was long felt, however, that it would be valuable to have an organization of magistrates to disseminate information upon all aspects of their work and to promote uniformity of practice. In 1920 through the help of the Howard League for Penal Reform a meeting was held at which it was agreed that The Magistrates' Association should be formed, and in the following year the inaugural meeting of the new body was held. Nine months after this inaugural meeting the membership was 563, in 1924 it was over 1,000 and by the outbreak of war in 1939 it had reached approximately 3,750. During the first two years of the war the activities of the Association almost ceased and membership dropped by about 500, but from 1941 onwards the number of members increased by leaps and bounds; in the ten years from 1941 the number of members nearly trebled, and in 1957 had reached 10,000. Lord Haldane was the first President of the Association. During his presidency he became Lord Chancellor and since his death in 1926 the Lord Chancellor of the day has always been President.

Since its inception the Association has existed to help magistrates in the responsible and difficult work which they have undertaken and its work falls under four heads:-

(a) Collecting and publishing information and giving information and advice to individual magistrates.
(b) Promoting conferences and meetings of magistrates.
(c) Promoting uniformity of practice and the best methods of preventing crime and of treating offenders with a view to their reform.
(d) Keeping abreast of developments in the law and the administration of justice as they may affect the work of magistrates, and taking part in discussions thereon.

Lay magistrates are untrained and some may think ill-equipped for the work they have to undertake. The Association has always felt that one of its most important functions is to arrange meetings for magistrates, and for many years it was virtually the only organization seeking to equip lay justices more fully for their duties. Meeting and residential conferences were held up and

down the country addressed by experts on the various aspects of a magistrate's work. Under the Justices of the Peace Act, 1949, justices are now expected to undertake some form of training, and statutory committees, known as magistrates' courts committees, were set up in different areas to be responsible among other things for providing this training. These committees are constantly taking advantage of the Association's experience in this field to help them run courses or to undertake their organization. The Lord Chancellor's Department issued a model scheme of six lectures for the training of magistrates which was based almost entirely on a model scheme submitted by the Association to that Department. The Association's own meetings and conferences still continue as an important adjunct to the training provided by the magistrates' courts committees.

In order to help those magistrates who are unable to attend meetings regularly the Association has prepared a book of six lectures on the subjects in the model scheme for training. Many committees send this book to their new magistrates on appointment. In addition the Association runs a correspondence course covering in more detail the whole field of a magistrate's duties, and a number of magistrates' courts committees use this course for the training of their justices.

Soon after its inauguration the Association produced "The Magistrate" as an occasional bulletin for its members, dealing with matters connected with their work. This became a quarterly journal in 1924 and by 1929 was issued every two months. Throughout the whole of the war the journal was produced regularly in spite of many difficulties. Many members felt that "The Magistrate" was one of the most valuable privileges of membership and since the middle of 1954 it has been issued monthly. A typical number discusses recent legal decisions or legislation affecting the work of magistrates, contains an article on bail before conviction, and one on witnesses, reviews books of interest to magistrates, answers questions sent by individual members on problems arising from their work, summarises the more important relevant debates in Parliament, gives news from the many branches of the Association and reports the more important matters discussed and decisions reached at the last meeting of the Governing Council of the Association.

The Association has also prepared a small handbook to give the newly-appointed justice an outline of his many duties. This was formerly sent free to all magistrates on joining, but in recent years the Lord Chancellor's Department has thought it sufficiently useful to send to all justices on appointment. In addition the Association has also published and continues to publish other books and pamphlets of interest to magistrates.

The Association has always laid great stress on the importance of magistrates knowing the type of institutions to which they can commit, and encourages its members to visit prisons, borstal institutions, detention centres and approved schools. It also organizes a special annual conference for members of Boards of Visitors and Visiting Committees of prisons and borstal institutions, where the particular problems arising in this work are discussed.

Almost the whole of the country is now covered by branches of the Association which organize their own activities, but have direct representation on the Governing Council of the Association which is elected on a regional basis in accordance with the number of members in each branch or electoral division. Thus the Council is fully representative of members in all parts of the country and branches provide a valuable contact between headquarters and individual members.

The Council is assisted by an Executive Committee, and by other committees dealing with juvenile courts, probation, treatment of offenders, mental health, prisons and borstals, legal and Parliamentary matters and licensing.

On numerous occasions the Association has drawn on the knowledge and experience of its members to suggest amendments to Bills before Parliament and many of these suggestions have been incorporated in the legislation finally passed, e.g. the Road Traffic Acts, the Criminal Justice Act, 1948, the Justices of the Peace Act, 1949, the Adoption Act, 1959 — a consolidating measure — the Mental Health Act, 1959, the Magistrates' Courts Act, 1957, and the Acts dealing with juveniles and with matrimonial proceedings.

Sometimes the law is slow to change and a Royal Commission or Departmental Committee is set up to undertake a full inquiry and make recommendations on which legislative action can be based. Over many years the Association has gathered much knowledge and information on matters connected with magisterial work and has been able to make full use of this when submitting evidence to such bodies, e.g. the Royal Commissions on Justices of the Peace; Marriage and Divorce; Mental Illness and Mental Deficiency; Licensing; Betting, Lotteries and Gaming; and Departmental Committees dealing with adoption, homosexual offences and prostitution, maladjusted children, the probation service, the summary trial of minor offences, and the business of the criminal courts.

During the past few years the Association has also submitted memoranda to the appropriate Government Department on various matters such as: possible alternatives to short sentences of imprisonment, the after-care and supervision of discharged prisoners; and has issued reports on girls' borstal institutions, approved schools for senior girls, the remuneration of prisoners and the causes of crime.

Some of the matters which have been discussed during the past two years by committees, on many of which recommendations have been sent to the appropriate Government Department, are as follows: road traffic offences, enforcement of maintenance orders, open counter and self-service stores, working mothers with young children, State management of licensing, insurance benefits for mental patients, and diversification of prison work.

The Association also participates in a joint committee of doctors and magistrates which considers matters of common concern, and has issued reports on cruelty to and neglect of children, attempted suicide, medical reports to courts, the adolescent girl and the

adolescent boy; this joint committee is now studying the rehabilitation of vagrants and alcoholics.

Thus it will be seen that The Magistrates' Association provides a most valuable service to its members. It sends them regularly its journal, it suggests books for them to read, it informs them of the more important new laws and regulations, and through its meetings and conferences it enables them to keep in touch with new ideas and methods and to discuss them with their fellow magistrates. It puts at the members' disposal all its special knowledge and experience to help them in problems which may arise in the course of their magisterial work, and answers questions sent in by individual members, and a selection of which are published for the information of other members in the journal. It provides a means whereby members may express their own opinions on matters of interest to them as justices of the peace, and gives them an opportunity, through their representatives on the Council, of influencing the policy and decisions of a large and important body of magistrates.

At the meeting in 1920 the Parliamentary Under-Secretary, speaking for the Secretary of State for the Home Department, said that apart from the undoubted advantage of securing uniformity of decisions and practice, the Home Office would welcome an authoritative body which could be consulted as representative of magistrates. As the membership has grown and the scope of its work increased the Association has been consulted more and more by Government Departments in its own particular sphere. Speaking at a recent Annual General Meeting of the Association the Lord Chancellor expressed the hope that more and more magistrates would join the Association so that it would be able to exert an ever-increasing influence on the improvement of the administration of justice in the lower courts. The Association is proud of its record in helping magistrates in their manifold duties and of its happy relations with Government Departments and with other bodies concerned with the work of the courts; and through its varied activities it can justly claim to be rendering a most valuable service to the community.

III. SOLILOQUY.

One of the characters in one of Gilbert and Sullivan's operas sings a song to the effect that "the punishment must fit the crime". For many years however it has been a cardinal principle in the imposition of punishment by the Criminal Courts in this country that the punishment should not only fit the crime but fit the criminal also.

Consequently it has been customary, in fact it is an essential part of penology in all civilised countries, that the personality of the criminal, the surrounding circumstances attending his complicity in the crime for which he is to be sentenced, his background, the temptations to which he was subjected and in crimes of violence, in particular, what provocation he received, should be taken into consideration by the Court in determining a suitable penalty.

Under the provisions of Act 56 of 1955, as amended by Act 16

of 1959, in many cases the considerations referred to above are to be disregarded entirely, in fact it is specifically laid down that in respect of certain punishments such considerations are irrelevant and that the determination of the sentence is merely "mathematical". In other words, once a convicted criminal falls within a certain category the sentence is predetermined and once the conditions precedent exist, all that the court has to do is to "press a button" and the sentence comes out of the slot. The only mistake that the Court might make is to press the wrong button!

I refer in particular to Section 334(ter) 334(quat) and 335 which deal with the compulsory imposition of sentences of imprisonment for corrective training, prevention of crime, and the declaration of a person as an habitual criminal.

I must make it clear that the underlying principle of these punishments for suitable persons from a gaol or prison point of view has a great deal to commend it, but as the following examples will show, persons will be subjected to these forms of imprisonment in respect of whom there is no justification whatsoever for such harsh and vicious sentences. This is the objection to all automatic penalties and it is considered that such "compulsory automation" by the Legislature is a reflection on the ability of its judicial officers, who by their training and experience are far better able to decide what is a fit and proper sentence in a particular case, when dealing with such cases subjectively, than a general declaration by a legislative body dealing objectively with hypothetical cases.

Let me give examples of the inequities, hardships and gross injustices created by "automatic penalties". And I think it will be agreed that these are cases which must arise from time to time. I will not even concede that they will be rare, but even if they are, the injustices which they will create is no justification for the retention of a system that permits such injustices.

Jack is the son of parents both of whom work and who are over fond of entertainment — in consequence Jack is left very much to his own devices. There is no mother to welcome him home from school and his father is too tired or too busy with his entertainments to bother overmuch about the boy. Is this not the opening chapter to the life history of nearly every "problem child" or the child of every "problem parent"?

Well Jack's life follows the usual pattern. Seeking comradeship which he lacks from his parents he unfortunately finds it in the company of undesirable companions. At the age of 16 he is involved in a stupid housebreaking — breaking into a sports-club house with his pals where they eat the club's biscuits and drink the cool drinks kept there. He appears before the magistrate, primarily because one of his pals is an old offender. As a first offender Jack is cautioned and discharged. This sobers him up but conditions at home deteriorate owing to the "disgrace" he has brought to the family. — The parents do not seem to realise that it is their fault.

Some time later Jack commits a similar offence. On this occasion he receives six strokes with a light cane. Both offences were really boyish pranks.

This causes more trouble at home — and his parents are not

capable of dealing sympathetically with the lad — having neither the time nor the inclination.

A year later during the vacation when time is hanging heavily on his hands he with another fellow take a car for a joy ride. On the way they have an accident, Jack is not the driver. In consequence he and the other lad are charged with stealing a motor car.

Here is the Heaven-sent opportunity for the parents to be relieved of their responsibility in so far as Jack is concerned and they duly interview the Probation Officer and suggest detention in a Reformatory, exaggerating Jack's uncontrollability. Evidence to the same effect is given in Court and the Magistrate quite rightly judging from this evidence and Jack's previous record orders him to be detained in a Reformatory. Sight should not be lost of the provisions of the 5th Schedule to the Act which provides, inter alia, that separate counts in the same charge are to be regarded as separate convictions and Jack may have been sent to a Reformatory on one of three counts of theft in the same charge, in respect of the other two he having been cautioned and discharged.

Jack serves four years in the reformatory is a "Star" pupil, qualifies as a carpenter and is discharged at the age of 21.

He obtain a good billet with a big firm of building contractors and is in every way a model employee and citizen.

At the age of 25 however he stupidly purchases a second-hand plane from a coloured man not giving the consequences a thought. The plane proves to have been stolen and he is charged and convicted of receiving stolen property knowing it to have been stolen. Or whilst camping out he and his friends more as a prank than anything else kill and eat a fowl which is straying near their tent or steal some fruit or mealies from a neighbouring farm. The owner learns of this, and having in the past often suffered from the depredations of campers decides to put a stop to it and make an example of Jack and his friends.

Jack and his friends are in due course charged and convicted of theft.

Had either of these hypothetical offences been Jack's first offence, a nominal fine or even a Caution and Discharge would have met the case but because Jack has, through having "problem parents", been detained in a reformatory and having had three previous convictions for theft MUST be sentenced to imprisonment for "corrective training" that is for at least two and not more than four years under the provisions of Section 334(ter)(2) for stealing a fowl or a small quantity of fruit.

If Jack's previous convictions were in respect of three counts in one charge as inferred above, the position will be that on his second appearance in Court, though nine years have elapsed between his first and second appearance, a sentence of imprisonment for "corrective training" is compulsory.

Section 334(ter) indicates that this form of imprisonment is provided for a person requiring "training and treatment for his reformation". Can it be said with any sense of justice that Jack requires "training and treatment for his reformation". And who

is there who will not recoil in horror at the vicious sentence passed upon Jack?

It must appear obvious to all, to even the layman, that the sentence of imprisonment for corrective training imposed upon Jack has been imposed not because of the seriousness of the crime he has committed, but because he had previously been detained in a reformatory. And why was he detained in a reformatory? Because he unfortunately had parents who were not prepared to make the little sacrifices which is the duty of all parents. Surely his previous two convictions which were instrumental in his being sentenced to detention in a reformatory were expiated by this very sentence of detention in a reformatory. No consideration may be given to the fact that he was a model pupil at the Reformatory, that he has for a number of years been a model employee and that the last offence was ignorantly committed or done in the spirit of a prank and caused little damage to anyone and that for apparently five years he has led a blameless life. The fiat has gone forth. Jack falls into such and such a category and despite everything to the contrary it is permissible to depress only one particular button and the sentence of imprisonment for corrective training comes out of the "machine".

Does anyone think that this will reform Jack? Will it not more likely harden his heart against a society that can allow such an injustice and result in his detention in prison being extended to four years!

Here is another example:-

A young man, say 21 years of age, of good address and of good background having one evening indulged not wisely but too well in intoxicating beverages removes a car from the Parade, Cape Town. He drives it to Sea Point where he parks it safely, proceeds to a nearby Hotel, partakes of yet more liquor, and then takes another car and proceeds to Camp's Bay where he again parks this care safely and proceeds to indulge yet again in liquor. He now takes his third car and on the way back to Sea Point is arrested by the police. He is subsequently charged on one count of driving a motor vehicle on a public road under the influence of liquor and on three charges of theft of motor cars. On the first charge he is acquitted but convicted on the others and sentenced to four months' imprisonment and to a whipping of two strokes on each count. The sentences of imprisonment are suspended for three years on the 'usual" conditions.

Nine years later, he is now a married man having settled down and in a good position having led a blameless life since his youthful escapade, unfortunately is slightly negligent in the driving of his car in consequence whereof he kills a pedestrian. He is charged with culpable homicide and sentenced to a nominal fine, which might even have been suspended.

This conviction "keeps alive" for another ten years the former convictions of nine years previous [paragraph 1(a) of the Fifth Schedule].

Nine years later when he is 39 years of age he stupidly purchases a second-hand motor tyre or some carpentry tools

from a person under circumstances which makes him technically guilty of receiving stolen property knowing it to have been stolen or stupidly steals some mealies from a field alongside the road upon which he is motoring through the country. Under the circumstances, had Act 16 of 1959 not been in force, a nominal fine. might have been adequate punishment, but under the provisions of Section 334(ter)(2)(b) of the Act read with paragraphs 2 and 3 of the Fifth Schedule, the court is compelled to sentence him to imprisonment for "corrective training".

If the offence of which he is convicted is receiving stolen property knowing it to be stolen, being an offence included in Part 1 of the Third Schedule it is obligatory to prove the previous convictions (Sect. 303 bis).

This man has never been in prison and for eighteen years has led a blameless life, yet, under the amended legislation he is regarded as a person requiring "training and treatment for his reformation".

No wonder "Justice" has been painted blind but for a different reason than that intended by her creator. Under these circumstances no doubt she is glad to be blind "lest she should see how men their brothers maim".

COMMENT BY PROFESSOR J. P. VERLOREN VAN THEMAAT ON BEHALF OF THE PENAL REFORM LEAGUE

The above letter from an eminent lawyer with lengthy experience of judicial work is published, not because the Penal Reform League agrees, but because an exchange of views on this important subject is welcomed. From the point of view of penal reform, the principles embodied in the amendments effected by Act No. 16 of 1959 are sound and the new system should be given a chance to prove its value. A more or less unfettered judicial discretion has led to an undesirable variability in sentences imposed. In some cases, one judicial officer might impose a suspended sentence, another a long time of hard labour and strokes, for the same crime.

Even in one of the examples given, the committal to a reformatory is due to a magistrate placing too much value on the report of a probation officer who allows himself to be influenced unduly by a juvenile's parents — errors, if any, committed in the exercise of a discretion. The examples chosen seem to be extreme cases in any event. In two of the instances given, the sentence need not be imprisonment for corrective training, as alleged, because taking a motor car in the circumstances described is not theft but a contravention of section 1 of Act No. 50 of 1956.

The Penal Reform League has advocated some of the main principles embodied in Act No. 16 of 1959 for a considerable period, because the new system really serves one of the main purposes of punishment — reformation. The intention is that a prisoner sentenced to imprisonment for corrective training is only kept in prison for the period necessary to reform him and that

he should be gradually adapted to his return to society thereafter.

On the other hand, as in the case of all innovations, the new system is not necessarily perfect. Various modifications may appear necessary as the new system is applied in practice. It is undoubtedly essential that a thorough study is made of the manner in which the new system functions, and its effect, during the first years of its operation. A supervising body, which co-opts in each individual case the presiding judicial officer at the trial, may be necessary. Such body ought to have wide powers to impose a different sentence or to reduce the relative period of imprisonment drastically and even to grant a free pardon when this is necessary.

It may, in conclusion, be pointed out that, from a lawyer's point of view, punishment should not exceed measures justifiable as retaliation, except in extraordinary circumstances. According to De Wet and Swanepoel's "Strafreg", punishment is in principle only retaliation. Although one need not agree with this far-fetched statement, the general rule that punishment should as a rule be limited to measures which fall within the scope of retaliation — a *quid pro quo* — is sound. The fact is sometimes overlooked that the principle of an eye for an eye, a tooth for a tooth contains a very important limitation, viz. that there is no justification for taking two eyes for an eye or ten teeth for a tooth. On the other hand, a civilized legal system should not consider retaliation as a basic principle but rather as a limitation.

In primitive legal systems, when one man kills or harms another, even though through no fault of his, he is still liable to suffer the same fate. Gradually the concept of fault or *mens rea* limits criminal liability. Even now, however, our law, following English law in this respect, has not yet fully limited criminal liability to cases where the person liable is at fault. A further advance is the principle that retaliation is only justified where it serves some purpose, such as the reformation of the criminal or the protection of society in deterring others, or isolating the criminal.

The danger that punishment for such purposes may exceed what is justifiable as a retaliatory measure, however, is very real, and especially penal reformers have to guard against the danger of advocating measures which are wholly out of proportion to the seriousness of the crime committed. The lawyer may have a more balanced view in this respect.

FURTHER COMMENTS:

Whilst the Penal Reform League has, for many years, advocated additional types of sentence which have now been enacted, and whilst it agrees that all new provisions of the law should be given a chance to prove themselves, and that the very obvious defects inherent in the old legislation have rendered restrictions on the discretion of the Courts in imposing any type of sentence advisable, the substitution of complete rigidity of sentence for the wide measure of freedom allowed Magistrates in the past,

seems to it to have swung the pendulum, possibly a little too far; is it not possible to find a middle path, at least for cases before the Regional Courts ?

The real answer lies probably in the speedy institution of an adequate parole and probation service, whose reports should form part of the record and be taken into account (under amended legislation) in assessing a just sentence.

H. PH. JUNOD.

IV. NEWS OF THE LEAGUE AND OTHER NEWS:

(i) **Journey overseas:** On the occasion of the International Congress of Penitentiary Sciences and of the International of Criminology (August and September, London and the Hague), the Director of the League has been granted by the Executive Committee permission to go to Europe. In 1950 and 1955, previous visits to Europe and the United States have proved most useful for the development of our work in the Union of South Africa. It is well known that our specific problems in the field of correction are of a special nature, but past experience has proved that many overseas developments and policies can be of great value to us. Moreover, the essential value of these International gatherings is the unique opportunity they offer for personal contacts with those concerned in correctional developments.

(ii) On the occasion of the International Congresses a number of visits to overseas institutions will be possible, and in particular, a visit to Herstedvester in Denmark is contemplated. This unique effort to deal with psychopathic criminals may provide for us, in South Africa, the pattern necessary for the badly needed "psychopathic" prison or institution, recommended by the Lansdown Commission.

(iii) As a token of appreciation to the Swiss Mission in South Africa which has allowed the Director of the League to devote his whole time to our field of work, the Executive Committee has decided to allow him to give one full month of service in Switzerland in deputation work.

He has also been asked by those interested in our field in Kenya, to stop for a short time at Nairobi, so as to give as much information and advice as possible, for the eventual creation of a penal reform association in that country.

(iv) Most of our coming newsletter in April of 1960 will be devoted to a description of the large and useful material recently provided by Overseas publications.

Pretoria, 7/1/1960 HENRI PH. JUNOD.

In an article published by "The Star" on 1st July, 1959, the problem of Trapping was examined, and, reserving any considered opinion on this grave subject, the following excerpts are given for the consideration and solid thinking of our members:

"In pure law, in each case of successful trapping, at least three persons commit a crime: the police officer who instructs the 'trap', the trap himself and the actual perpetrator, all of whom should be convicted and sentenced were it not for the peculiarities of South African laws. Under these laws the penalties for such crimes differ from those which may be described as normal cases. The police executive guilty of incitement remains hidden, the trap is safe from indictment and only the party who committed the offence through the provocation and plotting of the police (whose main task is the prevention of crime) will be punished. — The same offence by the private citizen thus constitutes an immoral and illegal act, whereas that committed with the blessing of the authorities becomes immediately moral and legal. We are therefore confronted with the phenomenon of an apparent dual morality and legality, contrary to the universal principles of morality and the equal application of the law to all persons irrespective of status . . . "

"Conviction at any price seems to be the chief object of those who by trapping think to serve the 'interests of justice', disregarding the fact that to accept this system is to renounce all the achievements of criminal sociology, criminology and penal reform of the last 50 years."

"It is a fallacy to assert that trapping serves the interests of justice. It is not only a contradiction of justice but also a despicable and degrading act. If some may not agree with the foregoing contentions, most will agree that trapping is disastrous in so far as the trap is concerned, especially if he is a young policeman. — First he becomes used to the idea that trapping with the blessing of the authorities is not wrong, that it is a 'duty'; then he is tempted with the opportunity of distinguishing in a police career by carrying out his said doubtful 'duties'. — Once the sound moral barrier is removed, an otherwise moral man, without even knowing it, becomes an informer, a provocateur, an inferior member of the community who cannot be called 'clean' and trustworthy . . . "

It is of grave importance that these thoughts should be examined, especially in view of recent developments concerning the administration of the Immorality Act.

THE PENAL REFORM LEAGUE OF SOUTH AFRICA was officially created on November 1st 1946. Its objects are: THE PREVENTION OF CRIME and THE RIGHT TREATMENT OF DELINQUENTS.

THE LEAGUE SEEKS TO ORGANISE PUBLIC OPINION AND CO-ORDINATE THE EFFORTS OF ALL PEOPLE OF GOODWILL TOWARDS PENAL REFORM.

THE LEAGUE seeks to promote investigation into THE CAUSES OF CRIME, THE MEANS OF PREVENTION OF CRIME, and THE METHODS OF TREATMENT OF OFFENDERS.

THE LEAGUE urges greater use by the Courts of remedial and rehabilitative measures in the place of imprisonment, and the removal of all petty offenders from Prisons. In South Africa, where 94 per cent. of admissions into Prisons is for sentences of six months or under, the urgency of this work cannot be over-emphasized; the League demands the abolition of racial discrimination resulting in unequal sentences;

The League suggests improvements in Prisons and Institutions Regulations and the abolition of unscientific methods of treatment; the League takes every opportunity to press for reforms in our Courts, our Reformatories, Work Colonies, and Penitentiary Institutions, and advocates the removal of Prisons from the Cities and their replacement by diversified and classified Institutions in the Country; the League informs public opinion, urges intensification and co-ordination of all efforts towards Penal Reform, co-operates with all agencies and State Departments in the organisation of proper consultation and co-ordination of efforts.

THE LEAGUE IS YOUR BUSINESS — TAKE A HAND IN IT NOW.

For full particulars of the programme of the League write to:

THE DIRECTOR, PENAL REFORM LEAGUE OF S.A.,
P.O. Box 1385, Pretoria.

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APRIL, 1960 APRIL 1960

Penal Reform News

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INHOUD — CONTENTS

Issued by:

THE PENAL REFORM LEAGUE OF SOUTH AFRICA

P.O. Box 1385,

PRETORIA.

OFFICIAL NOTICE OF MEETING

THE ANNUAL GENERAL MEETING OF THE PENAL REFORM LEAGUE OF SOUTH AFRICA WILL TAKE PLACE IN THE WEAVIND HALL, WESLEY CHURCH, ANDRIES STREET, PRETORIA, ON **MONDAY THE NINTH OF MAY, 1960**, AT 8 P.M.

AGENDA

1. APOLOGIES.
2. MINUTES OF ANNUAL MEETING, 1959.
3. ANNUAL REPORT AND ACCOUNTS.
4. ELECTION OF OFFICE BEARERS.
5. ADDRESS BY THE HONOURABLE MR. JUSTICE V. G. HIEMSTRA ON **THE FORGOTTEN MAN** or **THE MOTHER OF KLEINBOOI.**
6. GENERAL.

N.B.—It will be appreciated if members give thought to the problem of the **Name of the League**, which is considered by many to be inadequate, and not to reflect the true nature of our efforts as an Association for the Prevention of Crime. Members are also asked to bring suggestions for the future development of our work, and on the necessity of providing for additional and younger personnel.

Pretoria, 31st March, 1960. HENRI P. JUNOD, Director.

MEMBERSHIP FEES

Life Members: £50.

Donor Members: Not less than £10 10s. 0d. per annum.

Organisations: Not less than £10 10s. 0d. per annum. (Organisations having a substantial membership of Non-Europeans, not less than £3 3s. 0d. per annum.)

Individual Members: Not less than £1 1s. 0d. per annum. Non-European members 10s. 6d. (Associate members, not less than 5s. per annum.)

THE PUBLICATIONS prepared by the League will be sent to members free of charge. Associate members receive the Newsletter free of charge.

For full particulars of the programme of the League write to:
THE DIRECTOR, PENAL REFORM LEAGUE OF S.A., P.O. Box 1385, Pretoria.

IMPRISONMENT

"Like many another great man of history, Johann Sebastian Bach was once arrested and clapped into prison. He had dared to differ with a petty Prince over circumstances concerning his employment, and was forcibly detained in Weimar during November and December 1717. Bach used the enforced leisure to write the famous collection of choral preludes 'The Little Organ Book', which he dedicated 'to the Honour of the Lord Most High, and that my neighbour may be taught thereby'."

— E. Power Biggs, Organist.

AGNES WINIFRED HOERNLE

Real independence of mind is regarded by many, and especially by those whose conceit and prejudices oppress others, as an index of pride, whilst on the contrary, it is one of the highest forms of humility. It is easy to simplify the problem of life, — it is easy to fall back on worn out formulae of the past, — it is easy to give way to the surge of collective egoism; but it is an exacting process to think independently, and to preserve, as far as it is humanly possible, a completely free outlook. — The Hoernlés have typified, in the South Africa of their time, real independent thinking and devoted, but in no way self-complacent service of their fellowmen. The quality of their mutual love, in that respect, is a singularly beautiful and moving memory for their intimate friends. There was in Professor Alfred Hoernlé, as a philosopher, as a thinker of exceptional clarity, something massive like a big mountain. There was in Dr. Agnes Winifred Hoernlé, as an anthropologist and a social welfare planner, as a mother of the **whole** people, a challenging expression of intelligent devotion to humanity. Both had considerable mental calibre, and were naturally a little impatient of minor brains, but, instead of clashing with each other, because of their different gifts, their very difference in outlook brought each of them to spur the other to greater and more efficient labour for their fellowmen. The independence of their outlook inevitably hurt those whose sharp and unhesitating professions of faith revealed inadequate thinking, those persons who probably never read the great word of Fénelon: "Man always stammers when he speaks of God". Many resented the grave challenge of the Hoernlés' complete intellectual, moral and spiritual honesty. — Blaise Pascal wrote that we would not **look for** God if we had not **found** Him. In that sense, the very caution of our late friends, in the realm of orthodox expressions of religion, was perhaps greater and deeper than the easy, uncritical acceptance of collective beliefs. There was no pride in their search for truth; it was the Hoernlés' reason for living.

The Penal Reform League is now mourning her former chairwoman: Agnes Winifred Hoernlé was a liberal in the true sense of the word, a sense which has been completely misrepresented by the Afrikaans translation into "liberaliste", because true liberalism does not respect tyranny of right or left; it intends to extend to the maximum number of people the maximum possible degree of freedom within an ordered community. Dr. Hoernlé refrained from sectional party-political life; she knew that, as the Bantu put it: "A man's thoughts are his kingdom". All abuse of power, even under the cloak of penal laws and administrative justice, were for her the negation of human liberty. She therefore made of the reform of our penal system one of the main priorities of her life, not because she was emotional about it, but because she understood with us that only a **colour-blind Justice** offers any future for Africa.

In expressing at this time our heart-felt sympathy with all her near relatives, in assuring them that their bereavement and

experience of loss is deeply ours with them, we would add, with all the members of the Penal Reform League, that we give thanks to God for her life of absolute rectitude and honesty, for her outstanding service of mankind, for her mother-like love of all the people in our South African nation: Briton (because she loved her own kith and kin), Boer, Bantu, Coloured and Indian. We bow before the mystery of our human destiny and the unfathomable purposes of God, and in humility and the inevitable sorrow of our hearts, we rededicate ourselves to the task Winifred Hoernlé so untiringly and efficiently performed, and take for ourselves the great words of her husband, who wrote:

"The problem of religion . . . is a problem of trust and confidence in the universe — not the kind of confidence in which a man, hoping God is in the job, takes life easily himself, but the kind which is a source of power, and makes him an effective force for good. It is a confidence without which his heart may fail him in the fight with evil, but which must be grounded so deep that any defeat in that fight cannot unsettle it."

[Studies in Modern Methaphysics (1920) p. 304]

THE NAME OF THE PENAL REFORM LEAGUE OF SOUTH AFRICA

From time to time, the name of our League comes up for review, and many have expressed the opinion that it should be altered. At the time when the League was created, the task in front of us was so heavily loaded with possible reforms that, without ever being a pressure group, we had to concentrate all our action towards necessary changes of a very practical nature. Therefore, thinking on the lines of the Howard League for Penal Reform in Great Britain, and of the programme presented by the Lansdown Commission, the name imposed itself on all those who started the League. But it was never intended that we should be assimilated to the emotional semantic contents of both "reform" and "league". We meant from the very beginning to follow the dictates of reasonableness, logic, and a policy of solid thinking. All our members will appreciate the fact that all our aims and objects bear the stamp of these principles. — Nevertheless, some ask the question: "Are the minds inspiring the League never to see what has been already achieved, and is their idea to appear always as impenitent reformers, even when many outstanding efforts have been made to implement the policy they advocate?" The answers to such a question are clear: — We acknowledge with gratitude all the progress of these last fourteen years; we respectfully remind our friends who think our name inadequate that there are still great reforms needed; but we have already ourselves, on many occasions, pointed out that our present name no longer covers fully the scope of our endeavours. We have often, in this quarterly publication, ex-

pressed the view that the true spirit of our effort is better reflected by the word "correction", than by the word "penal reform". We therefore ask all our members to re-consider the opportunity of changing our title, in order to bring into our name a truer picture of our work at the present time and in the future, and to send us at once their suggestions for the Annual Meeting of Members, which will take place in Pretoria, on the 9th May, 1960.

Our proposal might provide an intermediate solution. We would keep our name as it is at the present time, and simply add in brackets, for the next few years, a name which may little by little supersede our present name. There are quite a few difficulties in the way. We need a name which can be readily translated in Afrikaans, and the word "correction", with its present modern connotations, has not yet been fully assimilated by Afrikaans. It seems to us that we should return to our aims and objects, as clearly expressed in our Constitution. The time has come when our first object, which is the PREVENTION OF CRIME, should come to the fore, and the name "CRIME PREVENTION ASSOCIATION" would cover that phase of our efforts in our new sub-title. In Afrikaans "VERENIGING VIR DIE VOORKOMING VAN MISDAAD" would be adequate. For the next important aim, which is to PROMOTE THE RIGHT TREATMENT OF DELINQUENTS, it becomes clearer as we go ahead that the right treatment of delinquents is in itself one of the most important preventive measures in the building up of as crimeless a society as it can be. Therefore, it may not be absolutely essential to have it incorporated in the name of the Association. There is little doubt that all criminological advance shows that crime is much better prevented than counteracted. All penal measures are wisdom after the event, and the community must be made much more aware that the true solution for the problem of crime is for the whole people, and all groups of the people, to create social conditions in which anti-social behaviour is dealt with at the root. We will be glad to have the suggestions of all our members, and in the meantime suggest to them the full following letterheads :

THE PENAL REFORM LEAGUE OF SOUTH AFRICA
(Crime Prevention Association of South Africa)
(W.O. 316)

in Afrikaans :

STRAFHERVORMINGLIGA VAN SUID-AFRIKA
(Die Suid-Afrikaanse Vereniging vir die Voorkoming van Misdaad)
(W.O. 316)

Pretoria, 29th February, 1960. H. P. Junod, Director.

THE PREPARATION OF THE CASE FOR THE DEFENCE OF BANTU ACCUSED OF HOMICIDE

On the 20th September, 1936, at the request of Lord Clarendon (then His Excellency, the Governor-General), a Memorandum was prepared for the then Minister of Justice, Gen. J. C. Smuts. His Excellency had been perturbed by serious problems which had arisen in our minds about the inadequacy of the presentation of a full and consistent defence case in Bantu homicide trials, especially in the Sessions of the Circuit Courts. We had then assisted for about 5 years a relatively large number of condemned non-European men and women, and it was the opinion of the Governor-General that some of the points which had been brought to him should be given serious and careful consideration. This 1936 Memorandum was based on an experience of 14 years with the Bantu people: 7 years in Gazaland (a rather remote part of Portuguese East Africa, very directly affected by migrant labour), and a long period of constant and daily contact with the Bantu urban Pretoria situation. Nothing, however, came of this effort, except indirectly, and much later, when the Lansdown Commission examined our penal and prison system from 1945 to 1947, and gave some thought to the place of capital punishment in the administration of justice.

Twenty-four years have elapsed since the Memorandum referred to was written, and the author has gathered a more comprehensive and deeper experience of the operation of the death penalty in the Union of South Africa. He has seen in the condemned cells well over 2,000 condemned men and women of all races and tribes, and he has prepared and in the vast majority of cases, accompanied well over 800 of them to the gallows. The aim of the present Memorandum is not to discuss capital punishment in itself, at all. A 28 years' experience has clearly shown that this subject is one upon which most men and women do not think with their brain and mind, but with their blood, and consequently the application of the necessary cold logic and reason does not work at all. We have to accept therefore the fact that the death penalty is on our Statute Book, that its application reflects the will of the Legislature, and of the majority of the people, that the time is not ripe for raising the problem of abeyance of this punishment, and therefore we have, for a long time, considered that this problem must be left to each and every member of the community to decide for himself. In this Memorandum, we intend, purely and simply, to deal with some aspects of grave importance within the limits of the application of the death penalty. We wish to note with sincere appreciation at the outset the very high level of collaboration and mutual respect and confidence which has existed between the Judiciary, the Department of Justice (and especially the Law Advisers) and ourselves in our ministry to the souls of the condemned men. We have always been given the privilege of a full perusal of the Court records, and have always been received with outstanding courtesy, goodwill and consideration when we felt that important elements in a case — which had not been previously avail-

able to the authorities — had come to our notice. In this respect, our daily collaboration with the Deputy Sheriff has been of the highest order.

In recent years, we have had a series of cases in which a Stay of Execution has been ordered by the Supreme Court, in a few of them, at the very point of death. This is not in itself anything new at all. We have seen during these past 28 years (and my colleagues had seen before that time) a number of cases which went on appeal, and in which a re-trial was ordered by the Appeal Court, or the sentence was quashed and the prisoner sent home entirely free, from the condemned cell. But the praiseworthy action of the Judiciary, in the recent cases quoted, has brought to light very clearly the fact that some of the points raised in 1936 need to be again placed before all those concerned, and that is the reason why we have been asked to prepare this new Memorandum. Since 1936, the scope of our own limited experience has been considerably increased, although we still fully understand how inadequate our knowledge of legal matters is. The recent cases have raised in a pointed fashion the whole problem of the adequacy of the preparation of the case for the defence in those Native homicide trials leading to a capital sentence. Our remarks are therefore offered to the Department of Justice, to the Judiciary, to the Bar Councils and to all members of the legal profession with a keen appreciation of the limitations of the author, whose only possible charter of reference may be a relative knowledge of the Bantu people, of their language, of their social life, of their folk and proverbial lore, of their legal and ethical ideas, and in general, of the conditions of Bantu life in our times of profound and rapid social change. We would also like to point out very respectfully that the history of our administration of justice in South Africa reflects a very thorough evaluation of the problems of our country. Until 1905, we made what we consider to be one of the most exhaustive and valuable official investigations there is of the background of Native Law. Unfortunately, since then, a period of extremely rapid and almost uncontrollable industrialisation and urbanisation began, and we were faced by such a complexity of problems that the calm and wise approach of former days became almost impossible. We are especially sorry for this, because in other parts of Africa, there are extremely interesting developments in that respect. For example, one of the finest legal minds in Europe, especially in criminal matters — Professor Jean Craven, Dean of the Faculty of Law in Geneva — has recently spent more than a year in helping the Ethiopians of Abyssinia to codify their customary laws in the set-up of modern conditions: and if we had done the same here, we might have returned to some important features of Bantu legal ideas, like the fundamental principle of compensation in both civil and criminal law, expressed in an illuminating way by the Bantu proverb: "Musasi wa nandzu i ku riha" (The redeemer of the crime is compensation).

I.

Twenty-two years ago, we outlined what seemed to us to be serious weaknesses in the preparation of an adequate defence in cases of Bantu homicide trials: with the additional experience gathered since then, we would like to stress some of these weaknesses which have emerged still more clearly :

The Case for the Crown is a solid one. It is carefully prepared by the Attorney-General's office. Firstly, all reasonable time is at the disposal of the Prosecution for the sifting of all evidence which emerges from the Police investigation and the Preparatory Examination. When the Attorney-General asks for the collaboration of the Bar in the Crown case, it has now been established as a guide (which is not always followed, but which nevertheless remains a guide) that a lawyer must have at least **four years' experience** before the State can entrust him with the duty of prosecuting. There is thus a reasonable guarantee that the Crown case will be sound and solid.

The Case for the Defence is entirely different. It has, in a very large number of cases to be a Pro Deo defence, because of the general poverty of the Bantu people. The remuneration for such cases is inadequate and precludes at the outset the calling of an experienced Lawyer for the defence of the gravest cases before our Courts, those in which the life of the accused is at stake. Even when the accused can raise some money for his own defence, it happens, as in a recent case, that the cost of the preparation of the brief for the Preparatory Examination absorbed all the available money, so that the Defending Counsel at the time of the trial itself, had to be content with the customary inadequate Pro Deo fees. (We have for these past 28 years felt rather ashamed of the use of the term "Pro Deo". It seems that it should have deserved greater respect for its original Latin meaning). The result of the present provisions is that the most junior legal men are entrusted with the defence of the most serious, and often most complex cases before our Courts, cases of life and death. We do not underestimate the potential ability of many of these young advocates. But, in law, there is no substitute for experience. The heavy duties which fall upon them in murder trials are generally beyond their ability, not only because of their small knowledge of the substantive law, but because of their inexperience of life in general, and of Bantu life in particular. Nor can they, with such lack of experience, gauge the way the mind of the Court is moving, a matter of such vital importance to proper criminal defence. The fee paid (£5.5.0 for the first day and £3.3.0 for each subsequent day) is hardly sufficient to induce them to give of their maximum, and it not infrequently happens that, in order to avoid additional expenses, they only leave for the Circuit Court on the morning of the trial, meeting their client merely half-an-hour or so before the hearing begins, and this for the first time. Although defending counsel has had the record of the Preparatory Examination for a week or ten days beforehand, the odds are still heavily against him : he has only a very limited time in which to consult ; he does

not know his client's language and cannot begin to appreciate the sub-conscious motives which may have driven the man to commit the offence, if he did it; he has no access to the statements made to the Police. Whereas weeks, or months, have been spent on preparing the Crown case, only hours are available for the defence case. Very often, the young advocate is unable through lack of time to persuade his client to abandon a line of defence (e.g. that he was not intoxicated) which can only aggravate the case. The short consultation may bring out facts which justify further investigation, but which are not fully canvassed, either because Counsel does not have a full picture of the case, or because he is unaware of their importance in the mind of the accused. Apart from this, he has to canvass important issues in front of the Court, the importance of which he himself does not fully appreciate. Of these perhaps the most outstanding are as follows :-

(a) **Should the accused be put into the witness box, or not?** This necessitates an evaluation of the evidence tendered and of the way in which the wind is blowing in the Court's mind, a task which no youngster with a brief experience at the Bar can properly perform. To withhold the accused's testimony is indeed a very serious thing, as far as the Bantu are concerned. Few advocates know that in Native customary law and procedure, the idea of stopping an accused from giving his version of the facts, even if ipso facto he destroys his chance of an acquittal, is unthinkable. This decision to close the defence case without calling the accused has lead to the Tsonga proverb which says "Valungu va khoma munhu hi nkondzo" (The white people catch a man on mere tracks) which in their minds, is a grave indictment of our system of Justice. Even if the effect of calling the accused can only aggravate the case against him, the Bantu still prefer that he should be the one who has led the Court to convict.

(b) The Defending Counsel has to decide on question of **common purpose and complicity,** where there is more than one accused. On this point, he seldom realises — nor do the qualified lawyers with experience in many cases — that Bantu conceptions are totally different from our own. In our paper to General Smuts in 1936, we pointed out how, in the Bantu mind, the hierarchy of age-sets operates in questions of responsibility, and in fact exonerates any accomplices from a younger set. Thus, if an elder and a junior commit an offence together and in doing so kill a person, the older one alone is fully responsible. Younger accessories to the act are not considered responsible. We gave examples of a murder committed by two brothers, when the older, in front of the rope, protested with great dignity about his younger brother having to die, because he himself and he alone, had the full responsibility for the act. This is a point on which the legal profession as a whole, and the legislature, have a grave duty to reconsider the whole position, because our conceptions hurt the very core of the moral and ethical sense of the Bantu people.

(c) The Defending Counsel has to consider the question of **provocation.** Our law, to the Bantu's mind, is again entirely

unsatisfactory in its acceptance of what constitutes a sufficient provocation to reduce the crime from murder to culpable homicide. In their view, it over emphasises such facts and events as constitute immediate provocation (that is immediately before the crime is committed), and it neglects those long-past facts which slowly but surely unhinge the mind of an accused to such an extent that he resorts to violent killing, sometimes so literally out of his mind that he does not know what has happened. Often the conviction of an accused for the greater or lesser crime depends on whether the accused reacted immediately to the insult, or whether he first went out to relieve himself. We have often pointed out the fact that there are expressions in the Bantu language (to be specific, without losing the sense of modesty, about intimate sexual matters) which have such a deflagrating psychological impact, that a man loses all self-control immediately, completely, on the spur of the moment. But this is not the only form of provocation the Bantu consider as irrestible. In our own minds, we are satisfied that any act not perpetrated in the heat of the moment, or in immediate retaliation to the provocation, should carry the heavier penalty: but these niceties of distinction are unknown to the Bantu who look at the total extent of the provocation in a true, though instinctive, psychological sense, so as to determine the gravity of the crime, and not at the immediacy of the reaction in point of time. We remember very clearly an old Venda condemned man whose wife had absconded from his home twice, many years before. She had been brought back by her parents, because the old man had fully paid all that they needed for her lobola. When she fled a third time, the old man followed her, threw her down a cliff and killed her. His mind was as clearly irresponsible as any provocation on the spur of the moment: he had done all he could lawfully: he had reported to his Chief twice: he had accepted her back twice: the third time, he killed her in a fit of madness. In such cases, one cannot help feeling that the Courts are too concerned with the immediacy of the crime and the horror of its details, and not sufficiently anxious to delve back into the true motives for the killing. We are not inclined at all to condone any act of an individual who takes the law into his own hands, but concerned as the Courts are with the facts immediately surrounding the killing, and the horrifying details of its perpetration, the feelings of revenge for the way in which the crime has been committed obnubilate any idea that the crime, for other reasons, may not carry with it the moral reprehensibility which justifies, in the eyes of those who uphold it, the death penalty.

(d) The Defending Counsel has to plead and fully understand the implications of **extenuating circumstances.** In this, a knowledge of the Court's subjective attitudes to punishment and morality in general will play an important part. An evaluation of the circumstances which reduce the moral turpitude of an act is an essentially subjective one and in this the advocate's experience of the judicial approach and of human nature generally may well prove to be of vital importance in swinging the verdict one way or the other. When the provision relating to extenuating

circumstances was introduced in 1935, we thought that we would see a considerable decrease in capital sentences. This did not happen at all, to our mind largely because defending counsel, with his lack of experience of Bantu life, failed to bring out, with a full description of psychological and social conditions, the true mentality of the accused. We consider that, used with outstanding ability, the provision relating to extenuating circumstances (with the possibility of demonstrating the frailty of the so-called "normal mind") may almost give the death blow to capital punishment itself.

(e) The Defending Counsel has to understand certain **Bantu concepts or institutions such as witchcraft**, magic, ordeals, the intricacies of lobola, etc., a knowledge of which may prove vital to explain the offence. Above all, he has to know that Natives often come to court with fully pre-prepared false evidence, which is minutely rehearsed beforehand, and which can only be broken down by precisely as minute a cross-examination on detail. In Native cases, we have always been deeply averse to the passing of a death sentence on direct evidence only, uncorroborated by additional circumstantial evidence.

II.

Before passing to a few proposals we would like to make an relation to Pro Deo Defences, may we be permitted to mention two points on which Bantu and Western concepts differ radically when it comes to trial procedure and evidence. The first is the **formalistic way** in which evidence is led in our Courts, requiring as it does that an accused should abide his turn before addressing any remarks to the Judge or disputing the evidence given against him. A Bantu should be made to feel sufficiently at home to be able to interrupt a Crown witness and exclaim, as he would in a Chief's Court "But this man is lieing", etc. This may sound unpractical in that trials may be considerably prolonged if an accused is allowed to interrupt on each and every occasion he disagrees with the witnesses. However impractical to us, the system worked well in Native Law. Revealing indications, such as those made on the spur of the moment, may be far more useful in indicating guilt or innocence than may be all the evidence led according to straight-jacket rules. — The other practice which remains totally foreign to the Bantu sense of justice is the use of **accomplices** as Crown witnesses. Courts are, of course, very careful in accepting such evidence, and seldom convict on this evidence if it stands alone. To the Native mind, however, the very idea of obtaining a conviction on this evidence of an actual participant in the crime is totalling repulsive, particularly in view of the fact that the accomplice, mistrusting or not understanding the white man's promise of a free pardon, is likely to shift the whole responsibility on to the accused. We have had cases where, in front of the gallows, we have known that the first Crown witness was the one who should have been where the

convicted person was, facing death. We could, naturally, not prove it, but the situation was made perfectly clear by long weeks and months with the accused, and by continual denials up to the last moment, when nothing more was to be gained by adhering to a false story. We remember one case vividly of a very humble and unobstrusive Karanga, telling the Sheriff: "Go and tell your Chiefs not to bring men like me to this place any more . . . " It is indeed terrible to see a man walk his last steps to the gallows under such conditions. It gives singular point to the word of the great Lafayette "I shall ask for the abolition of the Penalty of Death, until I have the infallibility of human judgment demonstrated to me". In this respect, lawyers often assume that our system of justice is sufficiently fool proof to prevent any miscarriage of justice. We must respectfully point out that this idea proceeds from the assumption that by the time the accused has been through both a preparatory examination and a trial, there is no element left which can possibly have escaped the notice of the Courts. This presupposes that the theory evolved by the Police, or the Court, as to how the crime took place, must be correct on all evidence led. But it is only when the accused is on his knees with us, when he starts to restitute morally, or to protest his innocence, that we find new elements, elements which were sometimes totally absent from all phases of the trial. Mistakes have been made to our own knowledge: of that we are perfectly sure. For that reason, if for no other, it is essential that the Defence offered for those accused facing a possible capital sentence should be the very best available.

* * *

We may be accused of overstressing the role which Defending Counsel can play in murder trials. It is, of course, true that the large bulk of cases are reasonably straightforward, conforming to the standard pattern, beginning with the presence of the accused at a beer-drink, the altercation over some trifling matter, the tussle and the fight resulting in the eventual two, three or ten stabwounds on the body, in the neck or straight into the heart. But however standard the pattern may be, the fact is that the indictment remains murder, and as long as the possibility of the death sentence remains, it is only just that the more experienced advocate should conduct the defence. If, on the other hand, the typical case is such that junior counsel, with only a brief experience, can conduct the defence, is this not in itself an indication that the prisoner should never have been indicted for murder. This then raises the question of a more discriminate use of the indictment for the lesser crime of culpable homicide. At present most Native cases are referred to the Supreme Court for trial on murder, almost as a matter of course, even though the likelihood of a conviction for murder is nil. Indeed the highest judicial authorities go so far as saying that eighty per cent of the indictments for murder are at present clearly culpable homicides. This indiscriminate indictment for murder merely clutters Circuit

Courts' rolls and increases public expenditure on Pro Deo defences, which would not have been necessary had the crime been reduced at the indictment stage. The indicting authority's position is, of course, an extremely difficult one in view of the possible accusation of favouritism or political interference. Where any genuine doubt exists in his mind as to the possible verdict, an indictment for the greater crime must necessarily follow. At the same time, experience clearly shows that an unnecessarily large number of homicide cases are sent up for trial to the Supreme Court on murder when the only reasonable verdict would obviously be one of guilty of culpable homicide. Proof of this if necessary is amply afforded by those cases in which a plea of guilty of the lesser crime is accepted by the Prosecutor before a single witness has been called by the Crown. By the very acceptance of that plea at the outset, are the authorities not admitting that the accused should never have been indicted for the greater offence? They cannot, of course, arrogate to themselves the function of prejudging a doubtful case, but they can surely, from their long experience of verdicts and of the Courts, eliminate those cases in which little doubt as to the verdict exists. They cannot be positive that their guess will be correct but Parliament, by giving them a discretion in these matters, intends them to use it. They cannot shirk their responsibility simply by leaving the Court to sort out the facts for them. Surely, it is not too much to ask that indictments for murder be restricted to those cases in which they **genuinely** have considerable doubts as to the possible verdict.

Our law, unfortunately, does not provide for the distinction between 1st and 2nd degree murder, and it may take a long time before this legal provision is accepted. Therefore we would respectfully suggest that in the vast majority of cases of homicide, in which the Attorney-General knows almost certainly beforehand when indicting that no conviction for murder nor execution of the accused will follow, the Minister of Justice in close consultation with the judiciary and the administration may issue a circular, allowing for an indictment for culpable homicide. If this were done, a very large number of murder cases would be reduced to culpable homicide, and the emotional atmosphere behind capital cases would be withdrawn, and a greater certainty of conviction of the accused would result.

III.

TENTATIVE SUGGESTIONS

1. Instead of the present system under which a very large number of homicides come to the Supreme Court almost undifferentiated, we would respectfully suggest that the indicting authorities be given sufficient qualified personnel to make a more thorough study of each case before indictment, with a view to **differentiating** between the cases which are ordinary culpable homicide, and those which are likely to lead to a capital sentence.

2. We would wish all more experienced advocates at the Bar to feel under a **moral and professional obligation** to defend

cases Pro Deo, whatever their status might be, and whatever financial loss this may involve. It seems to us to be a question of honour for the profession itself.

3. (a) The **qualifications** required of members of the Bar who are given the right to prosecute on behalf of the indicting authorities should be made applicable to **Defence Counsel,** Pro Deo.

(b) **Defending Counsel's fee** should be the same as that of Counsel conducting the prosecution, namely £10.10.0 per day. It may be said that Counsel for the prosecution has to deal with a large number of cases on his daily roll which do not involve Defence Counsel, and that he should accordingly be entitled to a higher fee. This, however, loses sight of the fact that prosecuting Counsel has a much easier task in fact than that of Defending Counsel. All the Crown evidence has been sorted out for the Prosecuting Counsel at the preliminary examination, and his function is simply to re-lead that evidence before the Supreme Court. He has, moreover, the constant help of the Police, both in obtaining additional evidence and in contacting witnesses. Pro Deo Counsel, on the other hand, has no-one to assist him. He does not have the benefit of statements by defence witnesses and is, during the whole of the trial, under a very much greater emotional strain, and pressure of time.

The question of public expenditure, we submit, looms too large in the minds of State officials when it comes to paying out moneys for the proper defence of persons facing the possibility of the gallows. If the general body of public opinion in this country is agreed that the death penalty should be retained and is a necessary deterrent, then the least that can be said and expected is that an accused who faces this most final of all punishments should be defended by the best men available. A community must be prepared to pay for its convictions on this score. If, on the other hand, the run-of-the-mill murder case does not warrant a fee in excess of £5.5.0 simply because it takes the Supreme Court half-an-hour to reduce the crime to culpable homicide, then surely there is something wrong with the indictment process, as we have tried to show. It is suggested that if the indicting authorities can be encouraged to indict for murder only in the most serious cases of homicide, the cost of raising Defence Counsel's fee will be more than off-set by the fewer murder cases for which Pro Deo Counsel will be required.

(c) The possibility of **appointing Defence Counsel to cover the whole period of Circuit Courts** should be explored. This would make it more worthwhile for Counsel to accept Pro Deo defences and would be a considerable saving to the State in the travelling allowances paid to numerous different Counsel under the present system. It would also do away with an advocate trying desperately to find out what the accused proposes to say in Court only half-an-hour before the trial opens, with no time to lay any defence plans based on what he then learns. If we have stressed the question of remuneration to members of the Bar in Pro Deo cases, it is because of the fact that, unfortunately, this plays a very important role in ensuring that only the best

men are made available to defend the men and women with whom we are in almost daily contact in the condemned cells. By the time we see them, it is no more a question of £.s.d.: yet how often have we not had the awesome feeling inside us that, were it not for his lack of funds and the advocate's inability to bring out the full tragedy and turmoil of mind that lay behind the offence, the man praying by our side might not have had to go through the long, protracted and gruelling experience of the condemned cell. We say this, without in any way minimising the horror of the crime, nor the heart-rending sufferings of all those who suffered directly from it.

(d) If it be found impractical to change the existing system of Pro Deo Defences, then we suggest that junior advocates entrusted with a Pro Deo case should at least call for the case to be taken over by an advocate of at least 4 years' experience whenever they are of the opinion, after reading the record of the preliminary examination, that a death sentence is likely to be passed. In this respect we feel that the rule should be imperative. Bar Counsels may well feel that most cases are sufficiently straightforward to justify the sending of a junior man. However straightforward a case may be from a legal point of view, we are still convinced that a more experienced man, with a knowledge of legal proceedings, of the Judge, and of life in general, will provide a better defence, even in what seems to be a hopeless case. Cases involving a man's life, in our rather long experience, can seldom be said to be straightforward. If this recommendation is accepted, it will mean that very junior advocates will lose the valuable Court experience which they have hitherto acquired from Pro Deo defences. This may be so, but experiences acquired at the possible cost of a man's life may justifiably be disregarded as an argument when the stakes are so high. Junior Counsel can well afford to acquire his experience on lesser offences in the Magistrate's Court for 4 years, before embarking on what is in fact the most important defence of all.

It must, of course, be left entirely to the discretion of either the Attorney-General or the Bar Councils to determine when a man is ready to conduct Pro Deo defences. All we are really asking is that the requirements set for members of the profession to be entitled to prosecute should also be made applicable to Pro Deo Defences. If indeed the situation at the various Bars is such that the more experienced men are unwilling, for financial or other reasons, to undertake the defence of all cases in which a capital sentence is likely, then surely the time has come for the appointment of a **Public Defender,** selected by the State, who will take over the functions previously performed by members of the Bar. The Bar cannot have it both ways.

(e) In the course of a discussion of the problem with one of the most experienced lawyers of the Transvaal, a man with whom we have had the privilege of co-operating for many years, we came to the conclusion that, even with the help of experienced lawyers and fully qualified counsel, the cases for defence in Bantu homicide trials, should be prepared much more fully than hiterto, in fact as carefully prepared as those for the Crown, in so far

as this is possible, and the following two methods are suggested which may be tried in practice:-

(i) It is well known that when the indicting authorities have come to their conclusions on indictment, they at once notify the Magistrate who was in charge of the Preparatory Examination, of their decision, and this decision is communicated to the accused, wherever he may be awaiting trial by the Superior Court. At that moment, there is still plenty of time for preparation of a case for the defence, and it is respectfully suggested that an official of the Court be formally entrusted with the task of notifying the accused, and on that occasion, that he be formally instructed to obtain from the accused all the points on which a defence may be prepared. He would firstly get from the accused, away from all the formality of the Court-room, all the details of his own version of the story. If during this investigation, the official learns that some witnesses for the defence were not called, he would see that these are approached and that all data they may produce be recorded in writing. Once the official has all the available details in writing, he would communicate them to the Secretary of the Bar Council, and, at the time when defence counsel is briefed, he would already have a considerable amount of useful data on which he could then prepare his case.

(ii) Another possibility would be, at the time when the Magistrate is advised by the indicting authority of his decision on indictment, that a **firm of attorneys** be appointed Pro Deo, as is defence counsel in the Superior Court, on the basis of a roster to be prepared for the various firms in the different districts. The firm of Attorneys would then approach the accused and prepare a provisional defence case on the lines suggested above for the official of the Court. This firm would also transmit to the Secretary of the Bar Council all the available data, and defence Counsel in the Superior Court would thus be in possession of a substantial amount of facts, which would allow him, even if he meets his client very late, at the time of the trial, to be as fully aware as possible for all the avenues of a possible case for the defence. It is only right to add that attorneys should be precluded by their own rules from charging more than a nominal fee, when they appear for an accused at a preparatory examination, on this basis.

6. A Bantu language should be made a "sine qua non" requirement of anyone studying for an LL.B. degree in Bantu Africa. One of the fundamental pre-requisites of a proper defence is that Counsel should know the language of his client, and it is not too much to ask that the learning of a Bantu language should be a "sine qua non" condition for anyone wishing to practice as an advocate in this country. It has been far too easy to escape this perfectly reasonable challenge by suggesting that there are too many Bantu dialects, and that one does not know which

one should be chosen. For the Transvaal and the Free State, Sotho meet almost all cases: for the rest of the Union, Zulu-Xhosa is amply sufficient.

CONCLUSIONS

During our 28 years of work for the condemned men and women, we have been impressed by the praiseworthy manner in which the Superior Courts have gone out of their way to help the accused, supplementing wherever they could what may have been lacking in the conduct of the defence case. Our judges have conscientiously and consistently sought to mitigate the stringencies of the Roman Dutch Law of murder in Native cases, and we wish to pay tribute to them for this. Some of our Judges have not been afraid of incurring the criticism that they were too humane, too little conscious of the awefulness of the crime, in order to remedy the defects of a very inadequate defence. Were it not for their real wisdom and understanding humanity in these matters of life and death, we would find ourselves hanging murderers and rapists almost daily. At the present time, however, owing to the enormous increase in homicides (nearly 3,000 cases per year), owing to the pressure on the Courts and on a judiciary which is younger that it used to be, uniformity in sentences for similar crimes is not always apparent. Individual differences in approach to punishment and crime generally is almost inevitable under the best conditions. Whatever shortcomings our judicial system may have, however, it is with an experience of 29 years, with many different Governments, that we can express our tribute to the quality of the Judiciary. As the differences between the degrees of homicides all depend on the correct evaluation of human responsibility, we are convinced that, if the high level of the Judiciary is maintained, and if proper ways and means are found for the preparation of as complete a defence case as possible, we shall see less and less stays in execution, fewer released from the condemned cells on appeal, and fewer commutations of sentences. In that last respect one can only appreciate the integrity of an Executive fully conscious that the penalty of death is on the Statute Book, and that, unless there are very strong and potent reasons against the carrying out of the sentence, the law should follow its course.

May all our combined efforts lead our country to the time when we shall all understand — as well over half the civilised world understands — that the death penalty is not necessary: that the very increase in homicides, which is so spectacular, shows well the limitations of the argument of deterrence: that no child nor adult can be taught not to commit an act by a community which commits this very act itself, even within the terms of its legislation: that the presence or the absence of capital punishment makes very little difference to the incidence of homicides and violent crimes, and that the State and the community are infinitely more at ease when they use other means of fighting murder, means which are probably equally or more effective, and certainly less objectionable. Prevention is still better than cure.

OVERSEAS PUBLICATIONS AND DEVELOPMENTS

Interest in adequate social measures for the Prevention of Crime and the right Treatment of Delinquents is growing all over the World, and the Congresses of Penitentiary Sciences (London, 8th to 20th August, 1960) and of Criminology (The Hague, 5th to 12th September, 1960) will provide for most valuable consultations between all administrators and informed agencies and persons on the present situation. The Penal Reform News will endeavour to inform all its readers as fully as possible on the work of these Congresses, and the visits to Institutions arranged in connection with the meetings. As our members know, the occasion of such Conferences is especially precious for personal contacts, and on previous journeys overseas, we have been able to find new inspiration and very valuable information, which has helped us to formulate clearer views of our own problems, and of the methods to be used for better results in our own set-up. This time, South Africa will be better represented at both Congresses, as apart from the authorities concerned, our Universities, some Social Welfare Agencies, and our Judiciary will attend them.

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The range of the publications we receive is constantly increasing. More and more, the field of **Correction** becomes an integrated study, and all phases of social effort, in **Prevention, Probation, Institutionalisation** and **Parole**, are becoming at the same time more specific and better united into a common effort of the community.

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Glad as we are for the fine developments which have taken place and are still being implemented by the Department of Prisons, it is important that we should think deeply about the intensification of our efforts on those points of the Correctional Programme where we are still lagging behind, and, in reviewing the publications received, we would like to follow the consistent scientific pattern indicated above.

1. PREVENTION.

That is probably the part of the programme where we are most backward. It has not yet been understood by our South African community that all legal and penal meaures are the proof that **prevention has failed.** We are by no means alone in the lack of understanding of the "criminogenous" nature of many of our social conditions. In that respect, the present immense efforts of the **Youth Board of New York** are illuminating as a realistic approach to prevention.

Our readers will remember that we informed them of the extensive study, during the year 1957, definitely established that **75% of New York City's delinquency had its source in an estimated 20 thousand families, which constituted less than 1% of the City's family population.** These "delinquent families" were characterized by desertion, alcoholism, drug addiction, mental illness, criminal institutionalization, and a host of other severe and complex problems. — These findings permitted the greater isolation of the delinquency situation, and a

concentration of the community's effort on service agencies. Borough Committees were established and in fourteen high delinquency areas; the Youth Board, in co-operation with the Board of Education operates now Referral Units in schools, for detection and treatment. Community groups have been created throughout the City and five boroughs; a far-reaching study of delinquency prediction is developing. Work Camps have been created, an Army and Navy programme has been prepared. In 1959, a Youth-Fitness Week took place in May. It is impossible to mention all details of this great social effort. The lesson of it, so far, is that all voluntary agencies must combine, and **the Police must change its emphasis from arrest** (important as this is for the community) **to prevention of crime**, and become perhaps the leading agency of co-ordination of all other efforts.

In all our main cities, Youth Boards should be created, and if they follow, with due respect for different set-ups, the fine example of the New York City Youth Board, we may soon see a considerable decrease in our own incidence of juvenile delinquency. In a very recent review of the work, since its inception in 1947, the Youth Board, at its November 19th meeting (1959) approved a series of **guideposts**, with a view to improving their programme. We may note the following points:

Areas chosen for action have identified criminogenous neighourhoods, but the main focus should be increasingly on **multi-problem** neighbourhoods; — contracts with voluntary agencies should be more flexible in order that appropriate services may be provided to meet the total needs of the families under care; projects should be concentrated on areas of greatest need; the Youth Board Street Club Project should be expanded to cover all anti-social groups; greater emphasis should be put on employment; youths sentenced to Riker Island, and discharged, should be especially considered (1,000 annually), and especially those under a "flat sentence" (30 days to one year without any strings attached on release); major consideration should be given to meeting the need for in-service training of other City department staffs in relation to the Youth Board programme; the same high standards of performance should prevail, as in the past, and all projects should continue to be co-ordinated with the other services of the community.

Where evil is most conspicuous, measures to combat it are naturally proportionate, but we may well start a **real prevention programme** in our land, because the lesson of all scientific criminological research is that penal and penitentiary measures are only a second best, usually wisdom after the event, and PREVENTION is the best CURE. If we bring together all churches, voluntary agencies, and State authorities concerned together, as is done now under the New York City Youth Board, crime will be considerably decreased in our midst, because it will be **prevented.**

2. PROBATION.

To imprison and institutionalise an offender is a very serious measure, and it is seldom understood by the community and the Courts that it should be used only **in the last resort.** We have grown so accustomed to imprisonment, we consider it so natural and practical, that we do not seem to understand readily that it substitutes for normal life a completely artificial set-up, in which a segregated person is deprived of ordinary work, family influence, normal sexual life, etc. Criminologists abhor crime as much as everybody else; they do not try to minimize the awful actions of criminals; they do not condone acts which destroy community life at the root; they are not sentimental about the necessity of drastic action in retribution, if those actions are likely to

achieve the protection of society and bring the offender to moral, and physical restitution, and to rehabilitation. But they know well that experience of centuries has proved that the complete segregation from normal life cannot, by itself, re-create law-abindingness. An artificial superimposed discipline can make of men automatons, and break their individuality, but it cannot alone reform, re-shape human lives, and produce men who are free, because they have been freed from their evil selves. — This is the reason why modern Correction has evolved PROBATION.

The best and most complete review of the various systems of Probation available was published by the Secretaries of the UNO in 1951 under the title PROBATION AND RELATED MEASURES, a book which should be in the hands of all authorities and individuals concerned with this problem. It is unfortunate that, owing to the development in various lands, Probation covers often two different phases of the treatment of offenders: firstly, the method used by the Courts to treat a delinquent **outside the realm of prisons or institutions** in certain cases when the accused, once convicted, was considered as having a better chance to reform by continuing to live in the community under very strict conditions, than by going to prison; — secondly, the method used for **bringing to an end imprisonment**, before the full period of sentence has elapsed, and continue the treatment of a prisoner in normal community life, under very strict conditions. To-day, the second method has much better been called PAROLE, and we shall cover this phase later on.

PROBATION is a conditional suspension of a sentence of imprisonment. It is only applied if there are serious reasons for thinking that the accused, once returned to normal life, will not fall again, and that is the reason why the suspension of sentence must be accompanied by additional safeguards: strict supervision and responsible vocational guidance during the period of testing; close collaboration between the Courts and the Probation Services for the proper selection, and supervision of probationers; clear understanding by the accused that he is not left "scotfree", but that **his crime remains punishable during the whole period of his treatment;** a reasonable assurance that there will not be only superficial supervision, but real treatment. It must be fully realised that Probation is **not** mercy, **nor** commutation of sentence. It must also be differentiated from **recognizance**, a system through which a sentence of the Court is postponed by "binding-over", under the condition that the accused will keep the peace, and undertake, with or without caution, to live lawfully. Under the system of recognizance, there is no direct personal supervision of the delinquent.

It is interesting to note that **The Lansdown Commission** could go as far as saying the "Probation for adults has played a very minor role in the Union" (para. 1073); the Commission covered the work done by the Department of Social Welfare in that field, and noted that "the small amount of probation work it had been able to undertake has been almost entirely concentrated upon the juvenile and young offender" (para. 1059). It recommended much extension of probation, an extension of probation orders for adults, and that Probation officers whose functions arise directly or indirectly as a result of court orders, should confiine their activities to such work; the maximum case load which should be handled by a Probation officer should be about sixty to seventy-five. The Commission felt that these officers should be attached to the Department of Justice.

The whole consensus of overseas opinion tends to show that Probation must be a **fully equipped service.** We have used Probation very little in our courts, because a full service does not really exist, and this is not the fault of Social

Welfare Officers who are already overwhelmed by the exacting nature of their specific work. It is urgent that the State should re-consider the whole position, and place Probation on such a sound footing that it will become what it is meant to be, a full and complete answer for the treatment of a very large number of offenders who do not need to go to prison at all.

3. INSTITUTIONALISATION and IMPRISONMENT.

Recent developments in the field of penal institutions and prisons are so numerous, so important, and so varied, that it is impossible to report usefully on them without choosing one or two specticular examples, which may give a correct idea of interesting trends of our days. In our own country, as has been often reported, the prison system is developing towards what may be one of the best systems at present in existence: the women sections at George, Barberton, Nylstroom can be compared with the best in other countries; the prison-factories or modern agriculatural concerns, like Witbank, Leeuwkop, etc., are quite remarkable efforts.

Developments all over the world tend to classify, differentiate and reduce the size of institutions. One important category of persons needing a special institution are **psychopathic offenders**, who create great trouble in both mental hospitals and ordinary prisons, and we have given all details about such a Psychopathic Institution in this newsletter (Herstedvester, in Denmark). Ordinary institutions and prisons are more and more becoming labour camps, factories, and farming undertakings. The tendency is towards selecting a few spheres of the national market for penitentiary institutions (especially in the U.S.A.); we are still rather far from the time when ordinary Trade Unions will fully realise that the men incarcerated are just the ordinary workmen, but for the grace of God. Many labour men still consider prisons as a State undertaking, a most dangerous potential competitor in their own field. But there are signs that changes are coming. As we usually cover the penitentiary field rather extensively in our Penal Reform News, we do not need to elaborate much further on the present developments in prisons. For those who have seen hundreds of them, as we have done, in Africa, Europe and the United States, a prison becomes now a last resort, when all the social means of correction have failed, and therefore the field of imprisonment as such should become more and more restricted to **real** criminals, and local gaols should function only as remand institutions, until the courts have found better means of disposing of the ordinary offenders than by imprisonment. They will still be used for periodical imprisonment.

4. PAROLE.

Parole is conditional liberation of a prisoner, and it is becoming in a large number of countries, a most valuable means of treating criminals with a view to complete freedom. It would be too much to ask for the separate development of a full Probation and a full Parole System, and many countries combine both. There is nevertheless this great difference between the two methods that, in the field of Parole, we have to deal with **prisoners**, who have been institutionalised, who have lost their freedom for a short or long period, and have developed the automatic outlook which is so typical of segregated people. The aim of social measures against offenders is firstly the protection of the communtiy, the punishment of the culprit, — who goes to prison as punishment and not for punishment, — the treatment of the individual with a view to his returning to normal life, etc. But the last aim is not easy of achievement, because it is extremely difficult to treat a man towards freedom under the straight-jacket

of prison life and regulations. We see over and over again, in the press, statements to the effect that retribution is the only possible means of amending an offender. Retribution **is** clearly there with imprisonment and segregation from normal life, and Parole is still retribution, as it must be perfectly clear that a parole is far from being a fully free man; he lives under very **strict** conditions of conditional freedom. The difference with sterile retaliation **is** that the parolee **can** learn to live normally again. A male prisoner can again meet the other sex, and a female prisoner too, etc. It is very important that a true Parole System be not confused, as a South African newspaper did recently, with the type of unconditional freedom granted to certain prisoners in Great Britain, a system which called for scathing criticism by the Police and the newspaper mentioned.

A Parole System is at present being started by the Department of Prisons, and it is bearing fruit already. Many seem to think that a Parole System should be a Social Welfare System. They seem to forget that the parolee is **still under sentence**, and that therefore he is still under the direct authority of the Department of Justice and the Department of Prisons. There are thus good reasons for the Parole System being fiirstly developed inside our institutions. But these institutions are closed preserves, and they need urgently a body of Parole Officers **outside prisons**, working in close connection with those Parole Officers who work inside and prepare the release on parole of the inmates. We would like to see the principal authority resting in our Department of Prisons which has been developed further than most of our State Departments, but at the same time, we would like all our Departments concerned co-operating directly in this field: Social Welfare and Labour especially. The Prisons must get from Labour and the Labour movement their full co-operation, in order that the training of artisans and workers be fully accepted and that the inmate going on parole should have the full qualifications recognized for others. The Prisons must also get the full co-operation of the Social Welfare Department, the Churches and social welfare agencies, in order that the training of parolees should be devised in close relation with the social conditions of his family, and that the emotional tie binding him to his kith and kin be not purely and simply severed, as it too often is at present. If institutions develop as full-fledged factories and farms, with efficient production of reliable goods, one can think of a time when a man inside will work his full-day's quota, for which adequate remuneration is natural, and apart from his keep and the cost of administration. it may be envisaged that a prisoner may be able to help his family, which very generally, suffers more than he does from his imprisonment.

PREVENTION and TREATMENT are not completely separate problems and the development of a modern CORRECTIONAL SYSTEM is becoming one of the surest ways of preventing further crime.

FOOD FOR THOUGHT

This expression of opinion in no way reflects the policy of the Penal Reform League, but in order to arrive at some idea of what the members do think on this important issue, it would be much appreciated if they would be good enough to write in (as briefly as possible, since printing is expensive) criticising or supporting this private opinion, or offering any suggestion of any kind for the combat of the ever-growing violent-crime incidence, and for the mitigation of the economic problems presented to the country by the inability of the victims to earn, (either for themselves or for their dependents) despite the most skilled and expensive medical treatment available. To spend freely on the partial restoration of a shattered life (for whom no employment at present exists) and to destroy the criminal who could contribute cash to a central fund for all victims of crime, seems the height of folly.

Our next issue will give the paper to be delivered by the Hon. Mr. Justice V. G. Hiemstra, on the occasion of our Annual Meeting, on "The Forgotten Man, or the Mother of Kleinbooi", which will deal with the problem of compensation for the victims of crime, and members' opinions would be most welcome.

"Attention was recently drawn in a South African Weekly to the horrible methods used by gangsters in the Rand locations who bend their victims' spines so that vertebrae are parted, and then diabolically thrust in their knives, destroying for ever the lower physical half of the unfortunates who will be crippled for life. In anger, the people cry: "Let them die, let these soulless creatures be destroyed'. — No one can imagine any worse 'unlawful and malicious' crime than such wilful maiming of a fellow human being, a callous, intelligent, devastatingly brutal action, much worse than straight-forward killing. But the death sentence and execution will not achieve anything except the violent destruction of a miserable life, which could be used for 20, 30 or 40 years, with no question of any remission being granted, earning the means of making the pityful condition of their victims at least bearable. Not only does the community fall to the level of him who killed, but it destroys the possible means of supporting the physical life of those who have to suffer untold misery. In the economic field in South Africa, the country cannot afford to cut off any source of labour, simply because it cannot behave when free, — we must retain its productive capacity in conditions of safety for the rest of us, providing the necessary legal amendment, open market safeguards, etc.

One of the most disconcerting and unexpected effects of the death penalty is that it breeds an irrational, unnatural and unwarranted sympathy in the hearts of ordinary men and women for persons who do not deserve that sympathy at all. The spectacle of a human being fighting for his life against the whole community, stirs the imagination of many, and the despicable self-centredness and total egoism of most criminals seems almost miraculously to escape the average mind; every move of that person, especially when he becomes an able writer, like Caryl Chessman, is followed keenly by the whole world. A warder at St. Quentin is reported as saying: "To be unknown would be far more serious for Chessman than death itself!" — this is true

of a large number of offenders who are exhibitionists. — A programme of long years of really hard and productive labour, for the benefit of those who have been maimed for life, **providing capital for an anonymous State Fund for the victims of criminals** would cut at the root this complacency and at the glamour of this undesirable publicity around an uninteresting egoist. To make spectacular films of crime, and to stir the imagination of young and old by showing all the turpitudes of a criminal mentality, is exactly what many criminals desire. They much prefer to be shown as human monsters than to be ignored. Obscure and hard labour for many long years would at least provide material restitution for those whose existence has been made an agony, and material support for those whose mainstay has been destroyed by the killing of their loved ones. It may even bring a brutal criminal back to some humanity.

H. P. JUNOD.

Crime is, in its modern form, a reflection of society's inability to adjust itself in an industrial age. The Rule of Law is the solid foundation of all human development and the Legislator must make Law accessible to all citizens, irrespective of race, colour, creed and material status. Modern conditions drive the community into a complex of law-making which increases Statutes and multiplies year by year the scope of legal wrong-doing. The clear moral background of Justice is threatened by this development. The conscience of the people is numbed by the quantity of laws, rules and regulations which should exalt Social Order, but in fact encourage the community to drift further and further away from the true ethical foundations of human behaviour. This creates an emotional approach which tends to lead the people into considering occasional offenders and hardened criminals as equally "unfortunate" and to abandoning reason and logic in their approach to wrong-doing.

The Penal Reform League is a consistent effort to restore the balance needed. It resists the urge to unreasonable retaliation, but it does not advocate a namby-pamby attitude towards wrong-doers, nor measures which would condone anti-social acts. It bases all its endeavours upon the firm ground of the protection of society *by specific, intelligent and appropriate action* against *as well as* for *the offender. The League's standpoint is a* crimino-logical *approach to the problem of anti-social behaviour, in which intelligence is preferred to brutal retaliation. The League opposes mass measures against offenders and advocates individual approach in sentence and treatment. It urges the higher training of all those who have to represent the arm of the Law and to inform the programme of correction, and their more adequate remuneration. The League acknowledges all administrative progress and achievements of recent years in the correctional programme. MAKE THIS WORK MORE EFFECTIVE BY JOINING THE PENAL REFORM LEAGUE OF SOUTH AFRICA.*

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INHOUD — CONTENTS

Issued by:

THE PENAL REFORM LEAGUE OF SOUTH AFRICA

P.O. Box 1385,

PRETORIA.

"Freedom is not an ideal, it is not even a protection, if it means nothing more than the freedom to stagnate, to live without dreams, to have no greater aim than a second car and another television set — and this in a world where half our fellowmen have less than enough to eat. Today not rhetoric but sober fact bids us believe that our present combination of complacency and apprehension, of little aims and large fears, has within it the seed of destruction, first for our own community, and then for the larger hope that, as science and technology bring the nations inescapably together, freedom, not tyranny, will be the organising principle of the society of men."

Adlaï Stevenson, in *Foreign Affairs*, January, 1960, p. 208 (*Putting first things first*).

In an American Prison Journal, we found this great prayer of the former Head of the Roman Catholic Church, the late Pope Pius XII:

PRAYER FOR PRISONERS

"O Divine Prisoner of the sanctuary, who, for the love of us and for our salvation, not only enclosed Yourself within the restricted limits of human nature and then hid Yourself under the veils of the sacramental species, but also continually lives in the cell of the tabernacle, hear our prayer which rises to You from within these walls and which longs to express to You all our affection, but also our sorrow in the intense need we have of You in our tribulations and primarily in the privation of freedom which distresses us so much. Probably for some of us there is a voice in the depths of conscience which says we are not guilty, and that only a fatal judicial error has led us to this prison. Then we will derive our comfort by remembering that You also, the most august of all victims though the most innocent, were condemned. Or, perhaps, instead, we should lower our eyes to conceal our blush of shame, and beat our breast. But even thus we also have the remedy of throwing ourselves into Your arms certain that You understand all errors, forgive all sins and generously restore Your grace to him who returns repentantly to You. And finally, there are many in life who succumb to sin again, so that even the best among men mistrust us, and we ourselves hardly know where to begin the road of regeneration. But despite all this, in the most hidden corner of our soul, a word of trust and comfort whispers Your word which promises us the help of Your light and of Your grace if we want to return to what is good. May we, O Lord, never forget how the day of trial is a most propitious occasion for purifying spirits, practising the highest virtues and acquiring the greatest merits. Spare our afflicted hearts from being penetrated by that disgust which dries up everything, by distrust which leaves no room for brotherly sentiments and which prepared the road for bad counsel. And may we always bear in mind that by depriving us the freedom of our bodies, no one has been able to deprive us the freedom of the soul, which during the long hours of our solitude, can rise to You to know better and love You more each day. Grant, O Divine Saviour, help and resignation to our dear ones who mourn our absence. Grant peace and quiet to this world which has rejected us but which we love and to which we promise our co-operation as good citizens for the future. Grant that our sorrows may be a salutary example to many souls and that they may thus be protected against the dangers of following our path. But above all, grant us the grace of believing firmly in You, of filially hoping in You and of loving You, who, with the Father and the Holy Spirit, live and reign forever and ever. — Amen."

8 CAXTON. PTA.

I. WILL YOU PRAY FOR PRISONERS?

The National Council of the Prisoners' Aid Society, Social Services Association of South Africa, again appeals to Churches and Missions of all denominations to unite in prayer on Sunday, 7th August, for the welfare and rehabilitation of prisoners, for their families, and for all whose work lies among them.

RADIO TALK: The National Council of Social Services Association of South Africa will be giving a talk on prisoners' aid work over all transmitters of the S.A.B.C. on Sunday, 31st July, 1960, at 8.40 p.m.

BOODSKAP VAN SY EKSELLENSIE DIE GOEWERNEUR-GENERAAL VAN DIE UNIE

„Ek voldoen graag aan die versoek van die Nasionale Raad van Maatskaplike Dienste-Vereniging van Suid-Afrika om sy oproep op kerke van alle genootskappe te ondersteun, dat die eerste Sondag in Augustus weer vanjaar as 'N DAG VAN GESAMENTLIKE GEBED VIR GEVANGENES gehou sal word.

Ek vertrou dat daar op hierdie dag voorbidding gedoen sal word nie alleen vir die mans en vrouens in ons strafinrigtings nie, maar ook vir diegene wat ontslaan is en die moeilikhede van die buitelewe weer moet probeer aanpak. Die hele konsep van strafmetodes is gedurende die laaste eeu verander en die nadruk in ons gevangenisse is nou op rehabilitasie. Daar kan egter geen ware en blywende rehabilitasie wees sonder geestelike leiding nie.

Daar is nog andere wat ons ondersteuning en gebede nodig het en verdien. Laat ons ook op hierdie dag diegene onthou wat verantwoordilk is vir materiële en morele hulp aan gevangenes; laat ons ook dink aan alle staatspersoneel wat verantwoordelik is vir die administrasie van die wette en die behandeling van gevangenes, veral die personeel van die Departement van Gevangenisse, wat so 'n belangrike rol speel in die rehabilitasie van misdadigers en die voorkoming van misdaad."

(Geteken) C. R. SWART,
Goewerneur-generaal.

Die bostaande boodskap is vir die eerste keer verlede jaar deur Sy Eksellensie die Goewerneur-generaal (destyds Minister van Justisie) uitgegee. Sy Eksellensie het nou baie goedgunstiglik toegestem om dit te herhaal. Die boodskap word ook deur die huidige Minister van Justisie, Sy Edele F. C. Erasmus, hartlik ondersteun.

II. THE NAME OF THE PENAL REFORM LEAGUE OF SOUTH AFRICA

should be

THE SOUTH AFRICAN COUNCIL FOR SOCIAL DEFENCE

(formerly The Penal Reform League of S.A.)

DIE NAAM VAN DIE STRAFHERVORMINGLIGA

sou

DIE SUID-AFRIKAANSE RAAD VIR SOSIALE VERWEER word

Dit is die besluiting van die Jaarlikse Vergadering van die Liga se lede in Pretoria, om 9 Junie 1960, en daardie besluiting is nou voor alle lede van die Liga vir hulle goedkeuring voorgesit.

Such is the decision of the Annual Meeting of members on 9th of June, 1960, and it is officially presented to all members for their approval.

There may be a strong reaction from many of our old and respected members, when they read that such a decision was taken. The League has built up a much larger constituency than its actual members. Magistrates, Bantu Commissioners, Social Welfare Officers, read our newsletter, and the name has been now a household word for many. But there are most potent reasons for the change, and we wish to indicate some of them in this notice from the Executive Committee, which is written with a view to asking officially for the confirmation of our members.

(1) At the beginning of our efforts, very few understood what was meant by "penal reform", and the kind of precedent which occurred to all concerned was the Howard League for Penal Reform in Great Britain. The very centre of all endeavour was then the reform of our penal and penitentiary system, and the Lansdown Commission had prepared a well thought-out programme of reforms. But, even at that time, those who had a real knowledge of the situation knew that the reforms needed were all in terms of a better defence of the community against crime. As things developed and considerable progress was achieved in the sphere of prisons, it became more and more obvious that, if we kept the principle of reform as the main informing reason of our action, it looked as if we had no eye to see what had been done. Moreover the connotation of the word 'League' was invidious in the sense that we appeared to be a pressure group, which we never were.

(2) In close touch with the International effort in our field, we cannot fail to be considerably influenced by it, and within the sphere of concerted penal and penitentiary developments, the accepted designation of this effort is 'Social Defence'. It has become a technical term, well known all over the world.

The UNO has set up an important section dealing with these problems, and its name is the Section for Social Defence. Although the UNO tried to retrace its steps by showing some hesitation in carrying out the duties which were formerly those of the International Penal and Penitentiary Commission (now reduced to the International Penal and Penitentiary Foundation), it will most probably be prevented from doing so. World opinion is now generally determined to strengthen the activities of the UNO in those fields in which the old League of Nations was most successful, and which provide for the nations of the world a real and practical way of co-operation, outside the realm of national politics and the prevention of war. Therefore the term "Social Defence" is very probably there to stay.

(3) Faced with the desired co-operation with State Departments, our League needs to pay attention to the sensitivity of all authorities about their administration. When the word "reform" is the key of the organisation, State Departments are at once on the defensive. There is no doubt whatsoever that there are still many reforms needed; we have hardly started a Parole System; we have no independent and fully equipped and full-time Probation Service; we have not yet really implemented the new provisions of the Criminal Amendment Act as regards the arrest of petty-offenders, etc. But the very essence of our work is to help all authorities concerned to defend the community better against the growing incidence of serious crime. We have always meant to do that, but it now becomes the foremost of all priorities in our future activity.

(4) The word "Council" has the connotation of fundamental consultation between peers; it gives the right idea that the essence of change for the better lies in a planning of the future by men and women who see reason, logic, and a true consideration of humanity in all men, as the basis for their possible action in the community. A Council of people who find together, in the confrontation of their individual views, the real way to progress, is what we have always tried to be in the past.

Perhaps some will think that Social Defence is too negative. It may be in semantics, but it is not so at all in the modern acceptance of the term. Words become charged with meaning as they grow, and that word has now come to mean a positive action by the community against anti-social behaviour, and also a defence of the real interests of the humanity which may be recreated in criminals themselves. We leave the matter there, and ask our members now to express their views as soon as possible.

For the Executive Committee of the Penal Reform League of South Africa,

H. P. JUNOD,
Director.

III. YOUTH IN CONFLICT

by Prof. Herman Venter, Department of Criminology,
University of Pretoria

The post-war period is marked by a growing anxiety over youth generally and over the conduct of certain groups of juveniles, particularly the ducktails and young delinquents. In fact, the post-war world views with dismay the onslaught of youth against everything that was held inviolable before. To many it seems that modern youth is on a march of defiance, striking at the very roots of a hitherto well ordered society and aiming to destroy the recognized bastions of authority.

The immediate cause for the concern over youth was the sharp rise in post-war delinquency. Statistics revealed a shocking increase of 70 per cent. over the figure for 1945. No wonder a general alarm went out to stop the situation from getting worse. But what people failed to realise at first was that juvenile delinquency in South Africa had reached its lowest ebb during the war and that the so-called alarming increase was nothing else but a return to the pre-war level.

However, the fears are not entirely misplaced. A factor giving cause for anxiety is that post-war delinquency has taken a new trend. In former years petty theft and such-like economic crimes constituted a considerable proportion of the transgressions of youth. Today, however, crimes like drunkenness, the smoking of dagga, common and serious assault and the possession of dangerous weapons show a tendency to increase. This is symptomatic of a spirit of abandonment which is accompanied by a contempt of existing social and moral codes and a callous disregard of authority. This spirit of abandonment is especially noticeable among certain groups of juveniles such as the ducktails and the apostles of the rock-and-roll cult.

Now, as regards youth in general and delinquents in particular, it must be pointed out, in the first place, that a relatively small proportion of juveniles is involved in overt transgressions of the law. In the second place, the attitude of defiance, the conflict with authority, the deviate conduct, which we see in modern youth, is nothing else but the outward manifestation of a basic feeling of insecurity. Seemingly they rebel against the existing social order. In reality they are children spoilt by pampering parents and fighting against themselves.

In the interests of the future of youth it is necessary that remedial steps be taken. In official and unofficial circles, in public speeches and private conversations, many suggestions have been made already as to the best means to stem the tide. In discussing a few of the proposed measures, I want to emphasize, at the outset, that I still have faith in youth. Some of them may be misguided but they are by no means lost forever.

(1) Adult education surely is not the task of a single body. All agencies of communication should be actively engaged in teaching people the essential requirements of parenthood and of a sound family life. Parents should be brought to a full appreciation of the educational and moral task involved in the upbringing of children. In this connection we are, however, faced with a strange anomaly. While young men and women proposing marriage will seek advice and knowledge on the role of sex in married life, they prefer to remain blissfully ignorant on the more vital question of the education of the children from such marriages. In fact they are quite happy to leave the upbringing of the children entirely to chance. Such parents may be regarded as the marital equivalent of the hit-and-run driver. At times they will hit the children, but then again they will run as far away as possible from their responsibilities.

(2) Although there are many ways of improving family life, I want to stress only two factors. Firstly, a child needs security and protection. By security is not meant the provision of the material things of life. On the contrary, it is the fulfilment of the innermost desire of being loved and of being wanted. We might say that the atmosphere in the home should be such that it fills the child with a sense of belonging. The absence of this sense of belonging leads to feelings of insecurity and frustration which, in turn, can easily result in compensatory anti-social conduct.

Secondly, parents sometimes refrain from chastising the child for fear of thereby causing emotional disturbances and other disorders in the young personality. It is probable that in this way they will prevent the development of a neurosis (which I sincerely doubt), but it might very well be that their lack of positive guidance and healthy discipline will stimulate delinquent behaviour.

(3) The subject of discipline brings us to the much debated question of special youth battalions and compulsory military training. Some people are in favour of a return to the system of a Special Service Battalion such as we had in this country during the thirties. For two reasons I am opposed to the idea. Firstly, the purpose behind the old S.S.B. was entirely different from that of the modern youth battalion. The S.S.B. was created at the time of a severe world depression when employment was scarce. Instead of having a large number of youngsters spending their days in idleness, the government gave them an opportunity of earning a small wage in a unit specially created for them, at the same time receiving a sound military training. The youth battalion, on the other hand, is intended as a corrective for juvenile delinquents, ducktails and hooligans. To my mind the reformatories and industrial schools in this country are well suited and well equipped for correcting the behaviour problems of wayward youths.

Secondly, while the S.S.B. was an economic measure, the youth battalion might very well turn out to be a punitive measure.

It could develop into the military equivalent of the notorious chain gang which, for many years, constituted one of the darkest chapters in penal history. Our aim should be to prevent rather than to cure.

On the other hand, I am every inch in favour of compulsory military training for all juveniles leaving school. It is a widely accepted belief that home and school are failing in their task of giving the child a sound discipline. It is even said that our institutions of learning are turning out nothing else but educated barbarians. Here then is an opportunity to bring discipline home to the younger generation, and at the same time, to keep the country in readiness for possible emergencies.

It is sometimes true that, behind a mask of apparent and superficial obedience, the so-called disciplined soldier conceals a complete disregard of authority which, if given the least opportunity, sparks of negative reactions and even serious anti-social behaviour. Our aim therefore should be to train people with an inner discipline. Thus, if we resort to military discipline, such discipline should have as its essence education. And, for this reason, the military instructors should work hand in hand with persons who have the necessary scientific knowledge of how to educate and guide youth.

For those juveniles who wish to go to university immediately after leaving school, and who would like to follow a military career, the same system as that adopted in American universities could be of advantage. The larger American universities have what is known as the "Reserve Training Corps". According to this scheme students interested in things military can follow a military course as part of their graduate studies. After completion of the course, such student-officers could be absorbed into the armed forces although not necessarily so. The important point is that voluntary military and academic training takes the place of compulsory military training.

(4) In spite of what has been said so far, it would be a serious mistake to absolve youth from all responsibility. By virtue of what we are as human beings and by virtue of his existence, every person — even the juvenile — is responsible for his own deeds and actions. Education and training can assist in developing a sense of responsibility. This is the task of the adult, as well as his sacred right. The practical proof of the acceptance of such guidance and of the development of a sense of responsibility is reflected in the personal conduct. This is the sacred duty that youth has.

(5) In conclusion, I want to repeat the view expressed in my recent publication **Youth at the Crossroads.** Therein I indicated the keystones for a normal, healthy childhood and, through this, a healthy and untroubled national life. These are :

(a) a strong sense of religion;

(b) a sense of duty towards one's own, which means pride of nationhood, love of the mother tongue and adherence to customs and traditions; and, finally,

(c) a well-founded physical, mental and moral discipline.

THE FORGOTTEN MAN
or
The Mother of Kleinbooi

I want to address you about the forgotten man in the battle against crime. He is not the policeman who gets the medal, not the advocate who hits the headlines, not the accused who finds himself in the limelight for a brief spell before he enters the darkness of incarceration, nor is he the judge who doles out time, in scarlet robes. He is the victim of the crime, who gives his evidence if he is still alive, is bullied around by counsel for the defence and then goes home to nurse his loss. The most he can hope for is the thought that the author of his discomfort will in turn suffer discomfort. If he is of a vengeful nature this may soothe his aching breast for some brief moment. And more often than one would like to see, he does not even get that, because his evidence may have left behind some lingering "reasonable doubt" in the judicial mind. And then he is forgotten, like the mother of Kleinbooi.

The story of Kleinbooi unfolded itself in a criminal court where counsel for the defence was exhorting the judge to show mercy to the accused, who had been found guilty of murdering one Kleinbooi. "The accused has a mother, my lord," he said. "Yes, but what about the mother of Kleinbooi?" remarked the judge drily.

Dr. Junod has afforded me the opportunity of expounding a point of view which I have been unable to put into practice because the law does not allow me to. It is that the victim of a crime should be compensated by the accused from money which he should be enabled to earn while in prison. In putting the suggestion forward, I am not merely being mindful of the forgotten man. I believe that the fact of having made restitution will have an important rehabilitative effect on the accused and will satisfy the community's sense of justice.

I shall first of all outline the provisions which exist at present for compensation of the victim. For practical purposes they are useless.

> The court is empowered by section 357 of the Criminal Procedure Act to award compensation to the injured party where the accused is convicted of an offence which has caused damage to or loss of property.

This is subject to the following limitations:

(a) an ordinary magistrate shall not make such an order when the compensation claimed exceeds £200. If it exceeds that amount he must reject the whole claim; he can't even allow the £200 within his jurisdiction.

(b) A regional court is in the same manner limited to £500. The injured party, if his loss is too big, loses the advantage of this section absolutely and is thrown back on his civil remedies.

(c) The order has the effect of a civil judgment. That is to say, the messenger of the court or the deputy-sheriff, as the case may be, will levy execution on the property of the accused. The costs of that have to go off first. More often than not, the accused does not possess sufficient property, or has no difficulty in concealing it. There is, however, some comfort in the thought that such cash as may be found on the person of the accused when arrested, may be used to compensate.

(d) The award will be made only on application by the injured party or by the prosecutor acting on his instructions. Few people know about this and so few bother to give such an instruction, that awards of compensation are extremely rare.

(e) Compensation is awarded only for damage to or loss of property — not for personal injury. I have seen a healthy man reduced to a human wreck in a cruel assault, but he derives no assistance from section 357, or any other section. I once tried a man who had thrown acid into the eyes of his young wife. She was blinded for life. I sentenced him to ten years' imprisonment, but I was powerless to assist this young woman who now has to fend for herself in total darkness. The man has one asset, his labour power, but the State prevents him using it for her benefit. The State keeps him in prison where he can't earn a penny.

Another provision in regard to compensation is contained in section 358. The innocent purchaser of stolen property has to give it up to the true owner. He may, however, be compensated out of such monies as may be found on the person of the accused when arrested. No doubt he smiles bitterly on being informed of that.

A vehicle with which an offence is committed is often not even left to the injured party with which to compensate himself because it can be declared forfeit to the State.

Otherwise the injured party is left to his civil remedy. He may institute action, with all the attendant dangers of being saddled with ruinous costs. It is no wonder that this so-called civil remedy which he has at his disposal is a dead letter. Either the claimant is too poor or the accused is too poor or both are too poor to make use of it.

After the law's delay has gone its leisurely way and the civil case at last is heard, the witnesses, who now have to tell the story a second time — and where there has been a preparatory examination, a third time — are not available or they contradict themselves. Although guilt has been proved beyond a reasonable doubt in one court, liability has now to be proved all over again on a balance of probabilities in another.

No wonder Mr. Bumble exclaimed: "The law is a hass!" and it is no wonder that the claimant throws the thing up in disgust.

By this time you will want to know what remedy I suggest. It is, briefly, that the accused must be paid the standard wage for the work he does in prison. Several of our prisons are today factories. The people who carry sentences into effect have far outstripped those who impose them, when it comes to modern ideas. Prisoners are no longer working the treadmill, breaking stones or otherwise performing useless labour. They make uniforms, boots and shoes, steel windows, furniture, they do bookbinding and building and they do farming by modern methods. They use machinery as good as that in any factory and the shoes they make are as smart and as good as any that anyone in this hall may be wearing.

I have to restrain myself now from wandering away from the point at issue because it is so easy to wax enthusiastic about the new look in our prisons. What I want to get at, is that the means are there today for a man to earn a decent wage for really productive work. Even for the well-educated prisoner there is an outlet in the great deal of administrative work which such a system entails.

He may be poor in worldly goods but he has one source of wealth, namely his power to produce. What is more logical than that he should be compelled to devote it to the following four ends :

1. Compensation to the injured person.
2. Maintenance of his dependants.
3. A contribution to the State for housing him, feeding him and giving him medical attention.
4. Building up a reserve fund for himself to make a fresh start when he comes out.

The field for productive employment is limitless. When you have made enough furniture for State needs, enough uniforms and boots for the police and armed forces, there will still be afforestation and soil conservation to be done.

At present a maximum of 6d. a day is paid to Whites and 2d. a day to non-Whites, and the first objection will probably be that the State cannot afford a factory wage to be paid. I do not agree with that. The support to dependants of prisoners, now being paid by the Department of Social Welfare, will fall away and the eminently satisfactory position will be reached that a man continues to support his family by his own labour. In many cases he will be doing so properly for the first time. And if the proper wage for the work is paid, and the man pays for his board and lodging, the position cannot be uneconomic. He costs more than the free labourer because he has to be guarded, but that is the price which the State has to pay for the maintenance of law and order.

The advantage to the injured person, whom I have called the forgotten man, is obvious, and I need not dwell on that, beyond saying that the administration of the criminal law will then not be based solely on vengeance but chiefly on restitution. This is in accord with the most fundamental purpose of law.

I have no doubt that a mass of authority can be found for this proposition in legal as well as in humanistic philosophy. I found support for it without much research in Jeremy Bentham's **Principles of the Penal Code,** Chap. XVIII, in Ogden's **Theory of Legislation,** p. 317: After stating that every human being to whom a wrong has been done, is entitled to satisfaction, he continues :

> "The best fund whence satisfaction can be drawn is the property of the delinquent, since it then performs with superior convenience the functions both of satisfaction and of punishment."

He goes on :

> "But if the offender is without property ought the injured party to remain without satisfaction? No, for satisfaction is almost as necessary as punishment."

Then, however, he gives a solution with which few will probably agree, namely :

> "It ought to be furnished out of the public treasury, because it is an object of public good, and the security of all is interested in it."

The reason for this somewhat doubtful solution is that Bentham wrote in the 18th century, when prisons were vastly different, and the prisoner had no means of doing productive work. In any event the public would have shuddered at the thought of a prisoner receiving payment.

It is time to come to detail and to see whether the theory can survive the rocks of fact. I have posed myself nine questions and have tried to answer them :

1. What of the man who can make restitution from private means? Does he not suffer other punishment?

If his character, as revealed by his crime and his previous convictions, is such that he will benefit by the rehabilitative training in prison, he must nevertheless go there, for a variable period in the discretion of the prison authorities, such as that now introduced under the name of corrective training. But he will probably stay for a shorter period than the man who is compelled to earn the restitution money in prison, depending of course on the amount, his rate of pay and the needs of his dependants.

2. What of the man who does not possess enough means of restitution immediately, but can earn a much bigger salary outside, enabling him to make restitution much sooner?

If the moral turpitude of his crime is such that sociey would feel outraged if he is not punished with the stigma of imprisonment, he will have to go to prison. Usually this well-deserved stigma will be earned in one year as well and truly as in seven, especially in the case of a man of good social position. I would release him after quite a short period and punish him by imposing a long suspended sentence, suspended until he has fully repaid. The instalments will have to be so heavy that he will

suffer the punishment of poverty while the major share of his income goes towards restitution. There may be cases where this form of punishment is sufficient and he need not go to prison at all. In such cases the suspension will have to last many years, not only the three which are now permitted. I now have in mind the business man who steals many thousands of pounds. It is to the advantage of everyone that he should rather be stripped of all earthly luxury while restoring the damage, than that a man of undoubted ability should be withdrawn from the productive economy.

For this purpose a public trustee will have to be appointed to receive the money, to distribute it and to report the accused to the police, as soon as he is in default.

3. What of the man who has committed an ugly crime but has done little material damage, or a thief who is caught before he can dispose of the stolen goods?

He is in need of rehabilitation and he will have to go to prison to receive it. And he will have to go for a period long enough to be beneficial to him. If he needs the indeterminate sentence, he should get it. The money he earns goes towards his dependants and the cost of keeping him. I see no harm in letting him save a fair amount of his earnings.

4. Will this apply to all offences?

Yes, all offences where damage has been done. Also pain and suffering. From £10 for an assault up to maintenance for life for a person who has been so injured that he cannot work. Also support for the dependants of a man who has been killed. The value of all stolen goods has to be restored. And the court will be compelled to order it in all cases whether application is made or not — unless the injured one expresly prefers to make use of his civil remedy. The only exception I would make is rape, because of the danger of false charges being laid for the sake of compensation. It may be that for some offences a man should, by way of additional punishment, not receive any pay. That will have to be further considered.

5. What about running down cases? Will you let a magistrate decide a claim of £20,000 when he is trying a man on a charge of negligent driving?

No, but in the first place, insurance takes care of that. If a claim is to be made against an insurance company, the award of compensation will be left to the appropriate court, because the insurance company is in any event not a party to the criminal case. The claimant should also be free to elect a separate civil trial for damages. I do not expect much practical difficulty, because a case in which great harm has been done, will in any event be tried by a regional court or the Supreme Court. I would not place a limit on the amount which a regional court may order. It will be found that cases calling for an award of many thousands, will in any event come before the Supreme Court.

6. Will this not unduly extend criminal cases?

They will be longer, but that will have to be faced. The court will have to receive a wide discretion, and exact computation of damage should not be insisted upon where it is not capable of exact proof.

7. What about the man under sentence of death? How can he make restitution?

Abolish the death sentence.

8. Are you not now mingling the functions of the civil and the criminal courts?"

Yes, of course I am. What about it? It is justice that we are looking for.

9. What results are to be expected from the system?

I do not visualise any significant decrease in crime. We will never have a community without crime. But we can have a system which is more satisfying to the intellect, further removed from the primitivism of revenge, and better equipped to enable the wrongdoer to repair his wrong. By maintaining his dependants the family bond is preserved. His punishment acquires for him a personal meaning and his labour becomes for him the key to freedom. The harder he works, the more he earns and the sooner can he expiate his guilt and look his victim in the eye as a free man — physically and morally free.

V. NEWS OF THE LEAGUE AND OTHER NEWS

It is with sincere gratitude that all members of the League have learned that, at the request of the Annual Meeting of the League, **Mr. F. Rodseth** has agreed to take the place of the Rt. Rev. Bishop R. Taylor, as **Chairman of the League.** All South Africans who have known our new chairman, both in his high administrative office in the past, and in his present important work in the mines, will welcome his decision to accept our call. We all understand how pressing and urgent his duties are, but it is well known that only very hard pressed and busy men are able to add other important work to their daily commitments. With Bishop Taylor, who has now taken charge of his new Diocese in Grahamstown, we had been graced by the help of a first class conscience and intellect, coupled with a deep sense of the delicate situation in which we are, and always anxious to speak only when it was necessary, with a profound sense of responsibility. We thank him for his invaluable support, and for what he will still do, in his new field, to extend the scope of our influence and action. With Mr. F. Rodseth, we are given the leadership of a very wise administrator, South African born, who thoroughly knows and appreciates the complexity of our efforts in a multi-racial set-up, who speaks Zulu like a Zulu, English like an Englishman and Afrikaans like an Afrikaner. His experience as a judiciary officer, as the leader of an administration, as a man whose knowledge of both the rural areas and the urban centres is as complete as it can be — his experience will fully uphold the wisdom of those who in the past have led us, men like Judge Lansdown, Judge Krause, a woman like Dr.

Hoernlé — and an authority, a "sakekenner" of our Statutes like Adv. Hoal. At a time when your Director is leaving for a half-year stay in Europe, he wishes to express his own personal gratitude for the leadership now assured by the Chairmanship of Mr. F. Rodseth, who has been a member of our League from the very beginning.

We have also been glad to welcome as a co-opted member to our Executive Committee, Dr. R. Kennedy, Assistant Superintendent of the Westkoppies Mental Hospital, whose knowledge will be very precious to us.

2. The Americans have *a sense of humour about penology*. Here are a few examples of it:

(i) TRAINING FOR THE FUTURE: In Hartford a prisoner, foiled in an attempt to escape, explained that he had tied some bedsheets together because he wanted to learn how to braid hair.

(ii) James Bennett is the Director of the Federal Bureau of Prisons.
RIGHT MAN, WRONG PLACE . . .
During a recent visit to California, the Director addressed the Los Angeles Bar Association. Some excerpts from his address appeared on T.V. News programme that evening. The following morning, a conversation between Jail Inspector Harold Swenson and a Terminal Island inmate went something like this:
Inmate: "Well, I saw your boss on TV last night."
Mr. Swenson: "Who do you mean, Warden Smith?"
Inmate: "Naw, the Big Boss, Mr. Bennett."
Mr. Swenson: "Is that so? Where was he?"
Inmate: "Oh, in some bar down in Los Angeles."
(Warden Smith, Terminal Island)

(iii) IT'S THE LAW.
In *South Carolina*: An unsuspecting male might be happy to know that a fine of 150 dollars and a 6-month jail sentence can be imposed on any man caught with hip pockets in his pants.
In *Nebraska*: A statute forbids barbers to eat onions between 7.00 a.m. and 7.00 p.m.
In *Illinois*: The township of Wheaton has a law forbidding anyone to enter the courthouse with shoes on.
In *Maine*: There's a law that permits spinsters to get pensions, to be paid for by an annual tax on bachelors over 30. Bachelors may escape the tax by proposing either to three women once or to one woman three separate times.

(iv) NOT A VERY HARD-BOILED EGG. While Mr. Odie Ford of Tallahassee was absent recently . . . Food Administrator Emery Ciskos took his shift. One morning while on early duty, Mr. Ciskos noticed one of the inmates assigned as cook was singing in a deep soft voice "The Old Rugged Cross". It made him feel very good to know that the man possessed enough piety to begin his day's work in such a beautiful frame of mind, particularly so early in the morning, and he commented on this to the man. "Oh," the powerfully built cook replied, "that's the hymn I boil eggs by for the diet line — three verses for soft and five for hard."

(v) SELECTIVE SERVICE. A new officer with about six months experience was being questioned by the captain.

Q: What would you do if you see an officer being attacked by a group of inmates?
A: Turn in an alarm and go to his aid.
Q: What if it were one of the lieutenants?
A: Which one?

(vi) 1st Inmate: "So you're my new cell mate?"
2nd Inmate: "Yeah."
1st Inmate: "How long you in for?"
2nd Inmate: "Seventy-five years."
1st Inmate: "Well. I'm in for 90 years. You take the bunk near the door. You'll be going out first."

(These examples were taken from "Federal Prison Service", the monthly roneoed newsletter of the Federal Bureau of Prisons of the U.S.A. with the expression of my thanks to my old friend, the Director of the Bureau, James V. Bennett) — H. P. Junod.

3. The Part of the *Police* in the *Prevention of Juvenile Delinquency.*

In the International Criminal Police Review, published by Interpol, an interesting address by Roland Berger, Doctor of Laws and President of the Juveniles' Court (Geneva) deals with this subject (No. 136, March, 1960). He points out that to many, and perhaps to some police officers of the old school, "police" is almost synonymous with suppression. The policeman is the guardian of the law, "relentlessly running people in breaches of the peace, reporting crime and misdemeanours so as to bring those responsible to book". This is true, but it is only one aspect, important as it is, and it is necessary for the police to "attach an ever-increasing importance to the preventive aspect of their work".

"To begin with, prevention is far cheaper than suppression and its consequences." Then, "in every policeman there is another being, which is not necessarily dormant. I maintain that if a police officer is kept constantly at suppressive work, it is sheer waste of humanity, of the good which is in him and to make him play an unnatural part . . . To widen his field so that his protective instincts are made use of is to satisfy his secret ambition . . . " Thirdly, "the performance of protective work by the police will improve its relations with the public".

The author then comes to his main topic: "Children in danger". He covers broken families, conjugal tension, bad education, in one word unsatisfactory homes. He shows the danger of the life in the streets after dark for children, left to their own devices. He then describes how "in the field of juvenile crime investigation and protection of youth, the police officer holds a privileged position. Walking the streets both day and night, the arbiter and judge of dozens of incidents each day, he is excellently situated to intervene at the first signs of juvenile maladjustment or any threat to their best interests . . . The police officer is placed on the threshold of the passage to the act and at the cross roads of maladjustment".

"Even in their suppressive work, the police can prepare the ground for the educative action of the children's judge and for the specialised services which take over afterwards. When the young delinquent is taken into custody the police officer has the privilege — and the responsibility — of the first contact. It is well known that the first contact often decides the nature of later ones. — I consider that the arrest and the questioning are the first phase of re-education. These give young people a shock which should be salutary,

but not traumatic (hurting). They should make some impression on him, but not too much."

"The United States, which is a country with considerable experience in police work have for a long time had special 'youth' squads, the idea which has since spread to many countries in Europe, particularly to France, Scandinavia and the Netherlands. On the other side of the Atlantic, towns of over 100.000 inhabitants have such squads. Some eighty per cent of places with over 10,000 inhabitants also have them. According to American criminologists, 5% of the police forces should be devoted to prevention and suppression of offences committed by maladjusted children. In Japan, this proportion is considerably exceeded. In the USA, the qualifications required of future members of a youth squad are an indication of the high esteem this work is held in. Applicants should belong to the police, have a secondary education, be in good physical condition and have the psychological qualifications required by this type of work. They must also be observant, have initiative and an understanding of social matters. Officers with a more extensive training in sociology, criminology or psychology than unspecialised candidates are preferred. Generally speaking, it is considered that, because of the complexity of their work, they must have an intelligence quotient of at least 110."

The author then describes the requirements of Switzerland in that field, and he comes to two important questions of principle involved in the establishment of a juvenile's squad: "the place of the women police and that of the ordinary police in the protection of children".

"In all countries, so far as I know, *the institution of a female police force has been the first step towards the formation of a special police for children* (we underline). This was in 1883 in London, also in the nineteenth century in the USA and in 1914 in Geneva, if I am not mistaken. While in Anglo-Saxon countries women police have always been actual police officers in the true sense of the term, wearing a uniform, and having the same duties as their male colleagues and working in close collaboration with them, on the Continent, they play a more social role, acting as police "assistants" specialising in the protection of children.

"The variety of tasks and duties of a juveniles' squad requires both male and female members. This facilitates sharing out the work and ensures greater efficiency in the various types of cases. There are fields which can be covered more effectively by light shoes than by heavy boots.

"Police women should be given work lying on the borderline between police and social welfare work, in particular cases which will later on require educational treatment. It is perfectly in keeping with a woman's nature to perform duties essentially protective in nature, in which they can use both their hearts and their knowledge of social work. These are roughly all cases concerning children, women and the family.

"The selection of police women should naturally depend on the work they will be required to do. In a town like Geneva, it would be quite wrong if they had not received training at the School of Social Studies, which alone can offer them the psychological, legal and social training which is essential to them. Too much care cannot be shown in choosing women of high moral quality and dignity to look after the interests of children."

On the possibility of overlapping between police work and the work of social workers, the author writes:

"It is not impossible to draw a dividing line between the duties of each. Even though the women police assistants may have a strongly social bias, they are still a part of the police and may always have recourse to more energetic measures when persuasion proves ineffective. Moreover, women police assistants usually work under very special circumstances, usually at a moment of crisis requiring immediate action (the father has been arrested, a child has run away, the daughter has become pregnant or looks as though she is becoming a prostitute, etc.). Women police may be posted to a first aid centre out of town or to a sorting centre . . . In no case — except, perhaps, where the social welfare services are lacking — should the intervention of the women police go so far as to take family into their care. When welfare workers and women police assistants are given the same training, then relations between the two bodies will be eased."

On the question of the place of the ordinary police in the protection of children, the author points out that circumstances vary very much in different states. He does not think that boys' clubs for example could be so easily established on the Continent as they were in the U.S.A., by the police, because of the fact that relations between the public and the police are not good enough in Switzerland, France or Germany."

We have reproduced much of this valuable article, because we all know that the question is urgent in South Africa. Many have asked for the formation of a women police force here. Our police are overwhelmed by the duties imposed upon them by their suppressive work, and it seems to us that a constructive effort, on the lines suggested by this article is urgent and may contribute to enhance the work of the police which is so often misunderstood and misjudged.

(With the expression of our sincere gratitude to the International Criminal Police Review).

HENRI P. JUNOD.

PRETORIA, 14th June, 1960

Crime is, in its modern form, a reflection of society's inability to adjust itself in an industrial age. The Rule of Law is the solid foundation of all human development and the Legislator must make Law accessible to all citizens, irrespective of race, colour, creed and material status. Modern conditions drive the community into a complex of law-making which increases Statutes and multiplies year by year the scope of legal wrong-doing. The clear moral background of Justice is threatened by this development. The conscience of the people is numbed by the quantity of laws, rules and regulations which should exalt Social Order, but in fact encourage the community to drift further and further away from the true ethical foundations of human behaviour. This creates an emotional approach which tends to lead the people into considering occasional offenders and hardened criminals as equally "unfortunate" and to abandoning reason and logic in their approach to wrong-doing.

The Penal Reform League is a consistent effort to restore the balance needed. It resists the urge to unreasonable retaliation, but it does not advocate a namby-pamby attitude towards wrong-doers, nor measures which would condone anti-social acts. It bases all its endeavours upon the firm ground of the protection of society *by specific, intelligent and appropriate action* against *as well as* for *the offender.. The League's standpoint is a* crimino-logical *approach to the problem of anti-social behaviour, in which intelligence is preferred to brutal retaliation. The League opposes mass measures against offenders and advocates individual approach in sentence and treatment. It urges the higher training of all those who have to represent the arm of the Law and to inform the program of correction, and their more adequate remuneration. The League acknowledges all administrative progress and achievements of recent years in the correctional program. MAKE THIS WORK MORE EFFECTIVE BY JOINING THE PENAL REFORM LEAGUE OF SOUTH AFRICA.*

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For full particulars of the programme of the League write to:
THE DIRECTOR, PENAL REFORM LEAGUE OF S.A.,
P.O. Box 1385, Pretoria.

Strafhervormingsliga van Suid-Afrika
Penal Reform League of South Africa

(W.O. 316)

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OBJECTS: To devise the best means for the Prevention of Crime, and to promote the Right Treatment of Delinquents.

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ANNUAL REPORT FOR THE YEAR 1959-1960
VERSLAG VIR DIE JAAR 1959-1960

Since our last Report, the League has suffered two severe losses, the first in the death of our most valuable first President, **Dr. F. E. T. Krause** (August last year), and the second in the death of **Dr. A. W. Hoernlé**, our first Chairman (last month). Both of these gave of their best in advice, support, guidance and prestige, and the League owes an untold debt to

them both. To replace Dr. Krause as Hon. President, the League has been fortunate enough to be able to report the acceptance of the Hon. Dr. H. A. Fagan, a former Chief Justice of South Africa, thus making it possible for the League proudly to claim to be lead by two men so highly thought of in the past as to be both ex-Chief Justices of this country, the other being The Hon. A. v.d. S. Centlivres. We know of no other body so fortunate. Plans for a memorial issue of our Newsletter in regard to Dr. Hoernlé are under way.

EXECUTIVE COMMITTEE

Since May, 1959, your Executive Committee has dealt with a large variety of subjects, some of them new and some fast qualifying as hardy annuals. For particular mention the following are picked out :—

(a) Our **Propaganda Leaflet** upon which we rely so much for information to the South African public, and as a means of drawing support for our work, re-cast, brought up to date and distributed widely, is still available and it would be much appreciated if those who feel they can help us through this leaflet, would ask the office for copies. Inside is a loose page containing statistics of crimes of various kinds, which will from time to time be revised and re-issued with the newest data.

(b) The **Continuation Committee** appointed by the Conference on **Prison Chaplains**, has held meetings and as a result issued a Memorandum for consideration by the major Churches and the Jewish Communities. Thereafter a full report on the degree of unanimity reached and the recommendations in regard to the establishment of a new system of Prison Chaplaincy was submitted to the Commissioner of Prisons: a deputation will meet the Prison authorities shortly.

(c) The reaction of the Universities of South Africa to our request for research into the **incidence of stabbing** has been most disappointing, only one offering any real co-operation. Some had no suitable facilities, others felt it would not fall within the scope of their students' work, others pleaded staff shortage or lack of time.

(d) **Corporal Punishment** in all its forms and degrees of severity continues to occupy a lot of time and thought: consideration of ways and means to reduce both the severity and mulitplicity of sentence, protests against the scarring for life of recipients, etc., all being fully discussed. The net result was that until the Executive has a really worthwhile body of well authenticated evidence on all aspects of this matter, no approach to the authorities can be made. This evidence is now in the course of collection, and assistance with this would be much appreciated. Arising from the discussion of this

matter, better methods of **assessing age** in the case of juvenile offenders, was again considered. Further thought on the best possible method to be recommended to the authorities will be given in the coming year.

(e) The Director submitted to the Executive Committee for approval the **memorandum** he had prepared for the Inter-Departmental Committee **on Rehabilitation:** this covered very fully the whole question of rehabilitation as applied to prisoners.

(f) Frequent consideration was also given to the various aspects of **capital punishment;** the recently disclosed practice by certain criminals of deliberately maiming their victims so badly that, despite the best and most expensive medical treatment, their earning capacity, or even their ability to walk, is for ever ended, was considered and the suggestion discussed that those found guilty of such crimes as usually merit the death penalty might be kept in gaol to provide income for a central fund for the support of the victims of such attacks. An article on this matter appears in Newsletter No. 51 and the members of the League are invited to send in their comments.

(g) **Prison sanitation** brought to light by the recent typhoid outbreaks in Johannesburg was the subject of a good deal of thought and correspondence: it is understood that considerable improvement has taken, and will take place, in this respect. The new jails are all equipped with flush systems.

(h) The Director submitted for consideration and approval his memorandum to the Papenfus Committee on the **Farm Labour Scheme:** unfortunately this brought forth from the authorities neither acknowledgment nor acceptance of his offer of verbal evidence.

(i) Another matter felt by your Executive to be urgently in need of revision was the position of **remand cases.** Correspondence with the authorities on this matter also took place.

(j) Consideration was given at more than one meeting of the legality of **police trapping,** whether the offence involved was sexual, I.G.B. or I.D.B. It seemed that a case could be made out for the offence of inciting to commit a crime.

(k) The recent move to investigate the position of the **Legal Aid Bureaux** was brought to the notice of your Executive, which has taken up the matter with the authorities, so far without much result. It is now proposed to point out that others besides the Bar Council and Law Societies have a very direct interest in any new plans made, the chief amongst these being those who have for many years actually formed the personnel of the Bureaux, the public who have supported them financially, as also those who benefit from their existence, emphasis

being laid on the fact that much most valuable work is done by these Bureaux quite outside the Courts themselves.

(l) The need to find a **new Chairman** has taken up quite a bit of time and thought since it was first announced that Bishop Taylor was being moved to Grahamstown. He has kindly consented to continue in that post until the League is able to find the right successor, which has so far not been possible.

(m) The **employment of juveniles** in certain Reef towns was considered, more particularly with reference to the allegation that great difficulty was being experienced both by employers and those interested in the welfare of juveniles owing to the refusal of the authorities in some areas to grant permits, except to untrained and unsuitable rural boys. This increased the chance of the urban lads getting into crime, and also provided no proper labour force for the employers in those areas. A full report on this position is being prepared for submission to the authorities.

(n) Your Executive finally considered and published **Newsletters** Nos. 48, 49, 50 (Jubilee Issue) and 51, to the contents of which your attention is drawn for information regarding the further activities of your Executive and the Director.

(o) The possibility of changing the **name of the League** has once more exercised the minds of the Executive Members and the suggestions of the members are eagerly awaited.

(p) The Executive was most happy to receive the name of Mrs. Vyvyan Wavel who has kindly undertaken to watch over the activities of our **friends and supporters in Cape Town** —(who do valuable work in our Parliamentary Capital) more particularly in regard to the arrangements for our Annual Council meeting there.

Your Executive notes with satisfaction recent reports that **implementation** of the new **Criminal Law Amendment Act** in regard to decreased incidence of arrest for petty offences is imminent, more particularly because of the tension, unrest and uncertainty of the whole situation in this country during the operation of the Emergency Regulations. We sincerely hope that the result of this move will so fully justify our long-standing pressure for a new approach to the problem of the petty offender and how to reduce prison populations, that it will remain in operation.

PERSONNEL AND MEMBERSHIP

In the matter of new personnel, the Leaugue has been happy to welcome to its Executive Committee Mrs. Eva as the representative of the Women's Christian Temperance Union, Brig. Allum who represents the Salvation

Army, Mr. E. Olwage and Mr. G. C. Odendaal, representing Social Services Association, whilst its Council now includes Dr. F. W. P. Cluver and Mr. T. Paterson Owen.

The Membership of the League has again dropped slightly, but this is largely accounted for by the elimination of much dead wood, and the re-classification of the balance into paid-up and defaulting groups. We now have 603 members, of which 9 are sponsors, giving us substantial support, 11 affiliated bodies, 10 life members, 15 donor members and 557 ordinary and associate members.

FINANCE

The finances of the League always give concern, since we are striving to reach the position where the possibility of taking on a junior — eventually to replace the Director — can be seriously considered. The formal accounts are attached hereto from which the position can be readily assessed. Members are again urged to give this problem some serious thought. Your Executive Committee is indeed fortunate to be able to call on the help and advice of your two Joint Hon. Treasurers, Messrs. A. Ross Glen and J. Bloch.

We would like to suggest to our members the possibility of mentioning the League in their wills; twice recently we have received legacies, one of £100 and another a share in the profits to be earned from investments of trust funds from a deceased estate. We also received quite an appreciable sum as tributes to the late Dr. F. E. T. Krause, at his request.

DIRECTOR'S ACTIVITIES

Your Director has continued with his work at the prisons, more particularly with those in the condemned cell and his constant contact with those in the field of criminology and penology overseas, resulting in much useful information reaching this country. He addressed 37 meetings during the year, held 12 Church and 138 prison services, and visited the condemned prisoners 194 times — a total of 401. He also wrote 210 letters for the League.

The Secretary sent out 758 circulars, letters and reminders and 343 receipts, as well as all our minutes.

During the course of this year, in Newsletter No. 50, we tried to assess both the positive results of the work of the League and the negative aspects of the present situation. If we look further than our South African borders in the Continent of Africa, in spite of the tense situation of the present which brought about a State of Emergency, we see quite clearly that our fundamental effort for colour-blind Justice is an important part of the answer to the challenge of African Independence. Few have realised that the growing urge of emerging African States is towards the building

of their own economy — in contra-distinction to a colonial economy which was built in terms of the needs of the Metropolis, and only indirectly for Africa and her peoples. In that respect the immense effort of the people of South Africa to realise their own economy may well prove to be of considerable importance for the emerging African Nations: and if we succeed in curbing in us the inheritance of the past, and open our eyes to the immense possibilities of unselfish leadership in the complex of emerging Africa — if we understand the natural urge towards the economic independence of what an African leader calls "Communaucratic Africa" — we may be of considerable help in the building of the modern set-up of new African States. So as to brace ourselves for such a formidable task, we must practise justice — we must cease to think in terms of discrimination — we must accept the full impact of our vocation in the content of African Independence — we must apply without reservation, in our private as much as in our public lives, the unchanging and eternal principles of the Golden Rule.

PENAL REFORM LEAGUE OF SOUTH AFRICA

STATEMENT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 31st MARCH, 1960

RECEIPTS

Balances — 1st April, 1959:			
Bank Balance	£616 19 9		
Permanent Paid-Up Shares — United Building Society	500 0 0		
Savings Account	349 7 11		
		£1,466 7 8	
Subscriptions of Members:			
Ordinary	372 14 2		
Affiliation	116 8 8		
		489 2 10	
Donations and Sponsors		2,050 19 2	
Interest —			
Savings Account	14 9 9		
Permanent Paid-Up Shares	28 18 7		
		43 8 4	
Sundry Receipts		3 13 9	
		£4,053 11 9	

PAYMENTS

Salary — H. P. Junod			£1,200 0 0
Office Expenses:			
Clerical Assistance	£300 0 0		
Rent and Telephone	144 0 0		
Pension Fund Contribution	24 0 0		
Stationery and Postage	76 10 10		
			544 10 10
Travelling and Subsistence			436 18 8
Printing and Advertising — Newsletters, Pamphlets, Annual Report and Council Meetings			340 6 4
Subscriptions, Donations and Sundry Payments			44 5 10
Balances — March 31st, 1960:			
Bank Balance	463 14 10		
Permanent Paid-Up Shares — United Building Society	500 0 0		
Savings Account	523 15 3		
			1,487 10 1
			£4,053 11 9

We certify that the above Receipts and Payments Statement is in accordance with the books of the Penal Reform League of South Africa for the year ended 31st March, 1960.

PRETORIA,
7th April, 1960.

CRAGGS, KOSSUTH AND OCHSE
Per: F. F. KOSSUTH,
Honorary Auditors.

Prys 1/- Price 1/-

NEWSLETTER No. 53 NUUSBLAD Nr. 53
OCTOBER, 1960 OKTOBER 1960

Penal Reform News

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CONTENTS — INHOUD

Issued by:

THE PENAL REFORM LEAGUE OF SOUTH AFRICA,
P.O. Box 1385,
PRETORIA.

"The problem of the autonomy of juvenile courts *starts to be reconsidered within the perspective of the general evolution of criminal justice. The rule of a criminal law which was based on retribution and deterrence used to be good justification for the removal of juvenile delinquents from the rigid abstractions of the common law. But the advent of a Law based on criminology and re-socialisation modifies the very foundations of this problem, because the principles of the new Social Defence are as valid for juvenile delinquents as they are for adult delinquents."*

*"*Corporal punishment *as it is still in force in certain countries, and applied in relation to the crime itself and to the age of the offender, seems to have no justification whatsoever. Violence calls for violence and the useless physical suffering is accompanied by no psychological effect which could not be obtained by other means."*

"The treatment *of young delinquents necessitates rules which are sufficiently adapted to the diversity and the fluidity of the problems at stake . . . . Much more than the judge of adults, the children's judge, the judge of adolescents and young adults must be a criminologist and must acquire the spirit of a right approach and meeting. It would indeed be very useful, in the organisation of the assessorship of the judge, to enlist the participation in the judgment itself of those whose profession it is to study the nature and the modes of that approach which are most appropriate . . . . Forms of intervention must be multiplied, their content must be diversified as well as their application; they should be combined with elasticity, protected from juridical abstractions and fictions, from the conventional infallibility of justice and from too narrow a distinction between criminal and civil law. Moreover, juvenile jurisdictions should be given the personnel and the organisations which are necessary for the careful and consistent application of treatment. Juvenile Magistrates must be able to rely on technicians and not only on outstanding good will . . . . "*

(Quoted freely, from an address by Judge *Severin Carlos, Versele* of Belgium, delivered to the Congress, on *Criminal Policy and Juvenile Delinquency*).

MILESTONES IN PENITENTIARY SCIENCE AND IN CRIMINOLOGY

An account of the meeting of the **Second United Nations Congress** on **the Prevention of Crime** and **the Treatment of Offenders,** London, 8—20 August, 1960, and of the **Fourth International Criminological Congress,** The Hague, 5—11 September, 1960.

Introduction

It has become very clear that the spectacular technological advance of man during the twentieth Century has not been accompanied by any similar advance in the field of human behaviour, and that the great word of Ecclesiates: "The one who increases his knowledge increases his grief" — goes much deeper than it appears. All over the world, at the present time, those who are trying to find ways and means of combating juvenile delinquency and adult crime, are forced to admit that the improvement of material standards of living does not produce, at least in measurable time, any similar improvement in human character: nor does the considerable progress achieved in penitentiary policy and in the framing of modern corrective legislation produce any spectacular change in the incidence of anti-social behaviour. Therefore, it is of grave importance for the future of mankind that men and women engaged in the corrective programme at all stages should come together in order to compare notes, to take stock of reality (even when it is unpleasantly challenging), and to reconsider the sum total of their efforts, in the midst of an age in which human society breeds its own destruction at a frightening pace. — In South Africa, we are placed at a point in the world where rapid industrial change has awakened a great mass of formerly pastoral peoples, where a kind of patriachial economy has been suddenly challenged to the core by unprecedented needs for expansion in all spheres of life We are "ipso facto" very directly interested to learn how other civilised countries try to meet the so-called inevitable growth of lawlessness resulting from fundamental changes of this kind. Owing to the relentless efforts of a progressive policy in our prisons and institutions, we can safely state that we are in no way behind more developed countries in that particular field. We have still far to go to modernize our legistlation in some spheres; we have still to reduce drastically the immense numbers of non-criminal offenders who are still sent to our prisons; we have still to understand that the answer to violent crime, except at the time of arrest, is very seldom violence, because in the field of human behaviour, there is no homoeopathic solution; we have still to consider wavs and means of reducing the use of caning, and of capital punishment. But we can, on a level of complete equality and complete equanimity, meet the experts of other civilised countries, when they search their own solutions for a better treatment of their own problems in the sphere of the Prevention of Crime, the correct Treatment of Offenders and the consideration of Criminological Thinking. That is the reason why the attendance at such Congresses as those mentioned above is of very great importance, and one is very appreciative of the fact that at the First Congress, two able offi-

cials of our Departments of State, a Professor of Criminology and three persons representing the Social and Spiritual efforts in this field, were present, and that at the Second Congress, we had the co-operation of a Judge of our Supreme Court. I am sure that they will agree with me that we often had the impression of a great deal of loose thinking and loose talking, that in the First Congress, we heard too much propaganda about the so-called achievements of very young countries, — but that the unique opportunities of meeting first class personalities, and, at times first class contributions, fully justified the expenditure — very large in our case — of sending us to Europe. One would have liked to be better equipped in order to bring back to the fullest possible extent all the information gained — It will be understood easily that we cannot hope to cover fully the work of these two congresses. Indeed, it was necessary for each one of us to choose special items in sections at a time when other items quite as important and interesting were considered in other sections of these international gatherings Nevertheless, the findings of each section will be given, as far as possible within the space available, and even if there have been slight modifications in the final draft which has to be produced by the editorial staff, the gist of international thinking on our problems will be sufficiently clear for all those who are interested in the field of Penitentiary Science and Criminology.

In this issue of "Penal Reform News", we will concentrate on giving to our readers the findings of the first Congress, reserving for later issues the second Congress and a deeper consideration of some of the main problems involved. We will also come back later to some interesting aspects of the discussions. We hope that some of the other South Africans who took part in the Congresses will give us, at a later stage, the benefit of their own views and impressions. We may add that we write from Europe, at a time of very grave developments in Central Africa, and that we are very sensitive of the fact that those developments tend to overshadow the urgency of our work. But it is a sound basis of thinking to insist upon the fact that, at a time when popular anger creates chaos in certain given conditions, the true statesman remains the one who believes that the solid foundations of Western civilisation in Law and Order, and in the higher values of the Spirit, remain the fundamental facts of any civilised future of Africa, and that, therefore, we must go on relentlessly and confidently forward and upward. Many of us have known for a long time that there are immense explosive forces in the African mind, but we have also known that those forces, which seem at times uncontrollable, will only be turned into forces for good and progress if the proper elites are trained in the basic patterns of civilised life and government, and if those elites are given their true say without delay. We also insist here on the point that explosive thinking is not of the African alone, and that there is no homoeopathic solution in meeting unreasonable demands by unreasonable conservatism and collective egoism, nor in answering by other forms of explosive thinking. It should be remembered that the truest form of approach of Africa for Europe and Europe for Africa, remains the great word of Dom Sebastiao of Portugal,

who gave to his first envoys the magnificent order: "Tirai cubiça dos homens, e favorecei os que por ela jazem" — "Root out greed from (the hearts of) men, and be merciful for those who lie (on the ground) because of this (greed)". Force, not as a temporary means, but as a permanent feature, nearly destroyed Europe, and threatens still to do so. In Africa, the same situation obtains.

I

PREVENTION OF CRIME AND TREATMENT OF OFFENDERS (LONDON CONGRESS)

For those who attended former Congresses on those subjects, organised under the auspices of the IPPC (International Penal and Penitentiary Commission) before the Social Commission of the UNO became responsible for the present organisation, a little uneasiness prevailed, because of the ever-growing size of participation from all parts of the world and the fact that (welcome as governmental consultation is in our field), when over a thousand delegates meet, official delegations become necessarily more formal, and a large part of the discussions tends to be devoted to the confrontation of official views, leaving little room for the consideration of penitentiary science problems themselves. There was also some over-emphasis by some delegations on a description of their particular efforts and realisations, etc. But the full value of many of the findings remains unimpaired, because one can still detect clearly in them the trends of international thought on our problems.

I shall not take any space for the description of the set-up of the Congress, the fine efforts made by the Organizing Committee in the United Kingdom, the facilities provided, — which were heavily taxed by the very large number of participants, — and will only express the gratitude of those present for all that was prepared and done for them. It is necessary for us to concentrate on the findings, which are given here as correctly as possible, but whose final form was not available at the end of Congress. On the whole, the conclusions given here were all substantially accepted without amendments.

The Congress was divided in Three main Sections and we will now purely and simply reproduce here their findings.

A. SECTION I: New forms of juvenile delinquency; their origin, prevention and treatment. Special police services for the prevention of juvenile delinquency. Conclusions and Recommendations.

Juvenile delinquency cannot be considered independently of the social structure of the State. It retains its fundamental characteristics in many countries either as a resurgence of its traditional manifestations or in the appearance of "new" forms. It should be noted that its recorded increase is partly due to the fact that today a large number of cases are recognized because of better organisations of prevention and treatment, and moreover, to the fact that certain countries include in delinquency a series of minor acts of indiscipline or social maladjustment. The new manifesta-

tions of juvenile delinquency — the importance of which has often been exaggerated — take such characteristic forms as gang activities, purposeless offences, acts of vandalism, joy-riding and the like which can be serious from the point of view of public order, without necessarily being an indication of serious anti-social behaviour.

Accordingly, the following conclusions are adopted. The Congress :

1. **Considers** that the scope of the problem of juvenile delinquency should not be unnecessarily inflated. Without attempting to formulate a standard definition of what should be considered to be juvenile delinquency in each country, it **recommends** (a) that the meaning of the term **juvenile delinquency** should be restricted as far as possible to violations of the criminal law, and (b) that even for protection, specific offences which would penalise small irregularities of maladjusted behaviour of minors, but for which adults would not be prosecuted, should not be created.

2. **Noting** that on the basis of published statistical material it appears that some forms of juvenile delinquency have emerged and increased most rapidly and seriously in certain countries, notwithstanding the great efforts made in those countries to prevent such delinquency; and desiring to ascertain whether such apparent increases are real and, if so, what the reasons may be; and **in order to facilitate** a better formulation and implementation of policies and programmes for the prevention of juvenile delinquency and the treatment of offenders; — **recommends** that this question be the object of a study which should be incorporated in the United Nations programme of work in social defence, and be undertaken with the co-operation of the Specialized Agencies and Non-Governmental Organisations directly interested in the problem.

3. **Considers** that the problem of recidivism among juveniles cannot be met merely by stricter enforcement, and in particular, by longer periods of detention. Diversified methods of prevention and treatment are required, and special attention should be devoted to the preparation for release and for the social re-adaptation of minors placed in correctional institutions. To that end, it is important and necessary to organize post-institutional assistance.

4. **Concludes** that the emergence of "new" forms of juvenile delinquency requires continuing study and the more intensive application of experimental as well as conventional forms of prevention and treatment.

Accordingly :

(a) **Considers** that in dealing with the problem of group delinquency, including gang activities, the efforts of official or semi-official agencies and of civic and social groups should be enlisted to help direct the energies of the young into constructive channels. Such institutions as community centres, juvenile and young adult hostels, and the like, and such other means as leisure time activities, sports, cultural activities, family holiday programmes, etc., should be more widely employed.

(b) **Considers** that it is most desirable not only to concentrate special attention on particular types of delinquency or of

delinquents, but also to provide more intensive studies of the personality and social history of young offenders.

(c) **Finds** that some differences exist in the measures that can be taken to prevent and treat juvenile delinquency in different countries according to their social, economic and political organizations, but **considers** that the problem is largely one of education through the school and the family, using the term "education" to include both the acquisition of knowledge and the formation of character. Where there is a lack of adequate parental guidance or control, and of the child's self-discipline, there is need for an invigorated education both at the adult and juvenile level. Such an education should be designed to bridge the gap between the generations by increasing the understanding and sympathy between them, and to extend the sense of moral and social responsibility.

(d) **Considers** that certain kinds of films, publicity, comic books, sensational news on crime and delinquency, low types of literature and television and radio programmes and the like, are considered in some countries as one of the contributing factors to juvenile delinquency. Therefore, in accordance with their own political, social and cultural systems and conceptions, each country may take reasonable steps in order to prevent or reduce the effect of what is considered as an abuse of mass media and as a contributing element in the causation of juvenile delinquency, and in order to stimulate the production of educative and constructive films and literature which will develop the moral and civic traditions in each country.

* * * *

Section I of Congress also considered a very fine report submitted by the International Criminal Police Organization, under the title "Special Police Departments for the Prevention of Juvenile Delinquency", and we hope to give a full account of this paper in further issues of Penal Reform News. The Conclusions of Congress on this specific topic were as follows:

The **Congress**:

I. **Considers** that the police, in pursuance of their general duty to prevent crime, should pay particular attention to the prevention of new forms of juvenile delinquency. They should not, however, go so far as to assume specialised functions more appropriately within the field of work of social, educational and other services.

II. **Considers** that the preventive action undertaken by the police in the field of juvenile delinquency should remain subordinate to the observance of human rights.

III. **Considers** that, allowing for variations in national requirements, the report submitted by the International Criminal Police Organization under the title "Special Police Departments for the Prevention of Juvenile Delinquency", represents a sound basis for the organization and setting up of special police departments where they are considered advisable for the prevention of juvenile delinquency.

IV. **Makes** certain reservations, however, with regard to the finger-printing of young offenders. as also to the advisability of the setting up of a system of good citizenship prizes or bad marks.

V. **Attaches** great importance to the broadest co-operation over measures to prevent juvenile delinquency between the police, the various national specialised agencies and the general public.

It was naturally impossible for a participant to be present at all sessions of the various sections, and one regrets, in retrospect, that, although this Section, attended by the largest number of delegates, covered the ground very well, its positive recommendations do not include a specific reference to the recent efforts of the New York Youth Board, and a direct recommendation that similar efforts be made, *mutatis mutandis*, in other parts of the world. By this, our readers will understand that I mean **firstly** the way in which the whole scope of juvenile delinquency in New York has been reduced to its correct **size** (one per cent of the families of this huge metropolis being responsible for seventy-five per cent of the total juvenile delinquency of the city), and **secondly,** on the basis of this correct assessment, the formulation of a **preventive policy,** to be applied consistently in the social effort to concentrate rehabilitative measures on those "criminogenous" families.

B. SECTION II: Prevention of types of criminality resulting from social changes and accompanying economic development in less developed countries. Short-term imprisonment.

Conclusions and recommendations

1. Criminality is not necessarily a consequence of social changes accompanying economic development in less developed countries. Social changes and economic development are both welcome, and under proper circumstances, may even contribute to a decrease in criminality. The term "less developed countries" refers only to a state of economic development.

2. The question of the types of criminality connected with social changes and accompanying economic development in less developed countries is one to which inadequate attention has been given and on which insufficient reliable data is available. Therefore conclusions and recommendations on this topic are tentative and subject to verification based on sound research.

3. Criminality which may be related to social changes accompanying economic development in less developed countries may not be new in the sense of forms of behaviour not previously otherwise observable. Attention should therefore be focussed on the increases in criminality in general in relation to social changes and not limited to concern with special types of criminality.

4. Cultural instability, the weakening of primary social controls and the exposure to conflicting social standards, which have a relationship to criminality, are intensified when social change is disorderly, when the degree of social change is high and when the gap between the breakdown of old social institutions and the creation of new institutions is great.

5. Social change is subject to a certain degree of control and should be a matter for national planning.

6. Migration, and especially internal migration, which is to be found associated with social changes accompanying economic development in less developed countries, has sometimes been erroneously assumed to be a cause of criminality. It is not migration, **per se**, that is conducive to criminality, but perhaps the cultural instability, the weakening of primary social controls and the exposure to conflicting standards of behaviour associated with migration that are to be identified with crime causation. This same conclusion is to be applied to urbanization and industrialization.

7. The unfavourable results which may accompany rapid migration to urban centres may be ameliorated by providing for the rural areas the social and economic advantages in search of which the rural inhabitant leaves the land for the city.

8. In connection with rural-urban migration, one essential element in maintaining the social integrity of the individual is the preparedness of the migrant for this experience and the preparedness of the urban community to receive him. In both instances, community development, now occupying a major role in national, economic and social policy in many countries, has an important role to play. Indeed, urban community development may prove a principal instrument for the prevention of criminality resulting from social changes and accompanying economic development in less developed countries. Urban preparedness also involves providing reception and orientation services (including temporary shelter), town planning including housing, educational and child welfare services.

9. Programmes for the prevention of criminality should be closely co-ordinated, if possible by an agency organized for this purpose, and constituted by persons highly qualified in this field. It is recommended that this agency operate as an integral part of a co-ordinated scheme for national, social and economic planning since, as stressed in United Nations social surveys, there is an urgent need to eliminate compartmentalization of thought and to integrate social and economic objectives in countries undergoing rapid development.

10. In considering the question of criminality and social change, emphasis is generally laid upon the urban centre. This may be warranted, but it would be advisable to assess the impact of social change on rural areas as well, since this may uncover the roots of crime which later manifests itself in the urban setting.

11. The penal code must be in harmony with, and reflect, social change. Individualization of justice must be envisaged so as to allow rational adjudication and treatment which take into consideration both the social order and the special circumstances of the individual.

12. Research is urgently required to assess the many factors of social change which have the potentiality to contribute to criminality, and research is equally urgently required to evaluate measures of prevention. To this end, there must be a marked increase in the adequacy of statistical techniques and procedures, to which national attention should be called and international

assistance sought. As an adjunct to statistical methods of research, reliance should be placed on case studies, field observations by teams of qualified experts and pilot projects. The United Nations should be asked to assume primary responsibility for carrying out this research in the regional institutes for the prevention of crime and the treatment of offenders organized with its co-operation, and/or by undertaking pilot studies with the co-operation of Governments, the specialized agencies of the United Nations, appropriate non-governmental organizations and other competent resources. The scope of the research should vary in order to provide proper attention to factors which may be world-wide, regional or local in character.

* * * *

As the subject of the above recommendations is so important for us in South Africa, I may be allowed briefly to add a few words of comment on the discussion of this item. It was illuminating to hear almost all delegates from South America, Asia, Australia, etc., stating very emphatically that social changes accompanying economic development in less developed countries did **not** mean increase, nor special types, of criminality. The contribution of the Republic of China, on that point, was most interesting; her delegate pointed out that migrations on a scale which cannot be imagined anywhere else had taken place in China, especially during the Sino-Japanese conflicts, and there had been **no problem of increased** nor **different criminality.** As long as the family ties hold good, in spite of enormous changes, social and economic, Chinese experience has shown that no special criminality need result from them. — It seems therefore that our own South African situation should be re-examined, with a view to concentrating on policies such as those outlined in points 7-12 of the recommendations of Congress.

Short-Term Imprisonment

1. The Congress recognizes that in many cases short-term imprisonment may be harmful in that it may expose the offender to contamination, and that it allows little or no opportunity for constructive training and would, therefore, regard its wide application as undesirable. It realises, however, that in some cases the ends of justice may require the imposition of a short sentence of imprisonment.

2. In view of this fundamental situation, the Congress realises that the total abolition of short-term imprisonment is not feasible in practice, and that a realistic solution of this problem can be achieved only by a reduction in the frequency of its use in those cases where it is inappropriate, and particularly where the offence is trivial or technical or imprisonment is used in default of payment of a fine without consideration of the offender's means.

3. This gradual reduction must be brought about primarily by the increased use of substitutes for short-term imprisonment, such as suspended sentences, probation, fines, extra-mural labour, and other measures that do not involve the deprivation of liberty.

4. In the cases where short-term imprisonment is the only suitable disposition of the offender, sentences should be served in proper institutions with provision for segregation from long-

term prisoners, and treatment should be as constructive and as individualized as possible during the period of detention. Wherever practicable, preference should be given to open institutions as places where sentences are served.

5. The Congress recommends :

(a) The Governments of member nations should, as soon as practicable, ensure the enactment of legislative measures necessary to carry the foregoing recommendations into effect ;

(b) Scientifically organized research be undertaken with a view to establishing means whereby it may be determined for what persons and in what circumstances short-term imprisonment is unsuited, and whereby satisfactory classification, training, and rehabilitative programmes may be devised ;

(c) Suitable programmes be formulated and put into effect for the instruction and training of correctional personnel concerned with short-term imprisonment ;

(d) Methods be devised and put into effect whereby

(i) Sentencing tribunals may be encouraged to use alternatives to short-term imprisonment ; and

(ii) The general public may be informed and persuaded of the soundness of the views herein expressed.

* * * *

Owing to a considerable extention of probation and parole services in some countries, and to the tendency inherent in administrative expediency, it was with some concern that we saw a kind of plea for some form of re-introduction of short-term imprisonment. We had to state on several occasions how dangerous this measure is when applied on a very large scale, and also how invidious it was when it penalized not real crime, but poverty. — On the whole the resolutions as passed are a valuable statement of policy, and without reaching the point of complete abolition of short-term imprisonment (which in some cases may well prove to be the only reasonable sentence), it clearly reduces this dangerous measure to those very cases.

C. SECTION III : Pre-release treatment and after-care, as well as assistance to dependants of prisoners. The integration of prison labour in the national economy, including the remuneration of prisoners.

Conclusions and recommendations

1. Pre-release treatment is an integral part of the process of justice and of the general training and treatment programme given to a prisoner in an institution. While general treatment programmes during any part of an institutional term should prepare the offender for return to life in freedom, certain ends can only be achieved during the last part of his imprisonment so that pre-release treatment should be applied especially to persons serving longer terms in an institution, but should not exclude those serving short terms.

2. In programmes of pre-release treatment, attention should be given to the specified problems inherent in the transition from

institutional life to life in the community. Pre-release treatment should include :

(a) special information and guidance and discussion on the practical and personal aspects of the offender's future life;
(b) group methods;
(c) provision for greater freedom inside the institution;
(d) transfer from a closed to an open institution;
(e) leave for reasonable purposes and for varying periods; and
(f) permission for offenders to work outside the institution.

As far as practicable, they should be permitted to work under the same conditions as free labour. If they are not housed in an extra-mural hostel, they should be housed separately from the main prison population in a special unit.

3. Special pre-release measures should take into consideration the social and economic conditions peculiar to each country, special attention should be paid to the needs of the released offender in respect of education, apprenticeship, employment, accommodation and resettlement in the community.

4. It is desirable to apply the principle of release before the expiration of the sentence, subject to conditions, to the widest possible extent, as a practical solution of both the social and the administrative problems created by imprisonment. The authority releasing the prisoner should be specialized and decisions about the prisoner should be taken, preferably after a personal interview with him, but in any case, on the basis of exhaustive information about him.

5. In deciding a prisoner's conditional release, the releasing authority should have some discretion, within the framework of the law of each individual country, regarding the time at which he becomes eligible for release. There should also be room for some flexibility regarding the condition of proof of employment, required in some countries before the prisoner is released. It is also desirable that flexibility should be applied in the case of the violation of conditions so that mandatory revocation could be replaced by substitute measures such as warnings, the prolongation or change in methods of supervision, and replacement in after-care hostels.

6. The principles under which offenders are excluded from certain occupations should be re-examined. The state should set an example to employers by not refusing, in general, to give certain types of employment to released prisoners.

7. The purpose of after-care is to bring about the reintegration of the offender into the life of the free community, and to give him moral and material aid. Provision should be made in the first instance for his practical needs such as clothing, lodging, travel, maintenance and documents. Special attention should be given to his emotional needs and to assistance in the obtaining of employment.

8. Since after-care is part of the rehabilitative process, it should be made available to all persons released from prison. It is the primary responsibility of the state, as part of the rehabili-

tative process, to ensure the organization of appropriate after-care services.

9. In the organization of after-care services, the co-operation of private agencies, staffed either by voluntary or by full-time experienced and trained social workers, should be sought. The necessity for a working partnership between official and non-official agencies should be emphasized. The importance of the role of the voluntary after-care worker is fully recognized. Private after-care organizations should be provided with all necessary information to assist them in their work, as well as reasonable access to the prisoner.

10. Successful rehabilitation can only be achieved with the co-operation of the public. The education of public opinion on the necessity for such co-operation should, therefore, be fostered by the use of all information media, and means should be sought to obtain the co-operation of the whole community in the rehabilitative process, especially that of the government, the trade unions and the employers. It would also be desirable that the press refrain from focussing attention on the released prisoner.

11. Research projects on various aspects of after-care and on attitudes of the public towards the released offender should be encouraged and assisted. The results of such research and findings of the various disciplines should be given the widest possible dissemination, particularly to judges and others having power to determine the character and length of sentences or commitments.

12. Special attention should be given to the provision of appropriate after-care for handicapped and abnormal offenders, alcoholics and drug addicts.

13. The dependants of prisoners should not be made to suffer by reason of the offender's imprisonment. State assistance should be made available to them as in the case of other needy persons and such aid should be given promptly, particularly to children.

14. The establishment and maintenance of satisfactory relations with the members of his family and with persons who may be of help to him should be supported. The advisability of permitting conjugal visits for prisoners should be carefully studied.

15. Reasonable facilities, and in suitable cases financial assistance should be provided for visits by members of the prisoner's family.

Prison Labour

The Congress,

Having noted the conclusions on prison labour adopted at the 1955 Congress;

Having noted also that the majority of these conclusions have not, to all intents and purposes, been applied in practice;

Reaffirms the general principles contained in these conclusions;

Takes note of the proposals made in the Secretariat's report and also of the analysis of the existing position as set out in the General Report,

Declares that

1. The problem cannot be solved unless account is taken of the present differences in the economic and social structures of the various countries.

2. The assimilation of prison labour to free labour is based on the principle that in the majority of cases the prisoner is a worker deprived of his liberty.

3. Prison labour, the moral and social value of which cannot be denied, must be regarded in the same light as the normal and regular activities of a free man. It forms an integral part of prison treatment. Moreover, it must also be integrated in the general organization of labour in the country. It must be suited to the natural capacities, character and, if possible, preferences of the individual, to help in preparing him for normal life. In the case of certain categories of prisoners suffering from physical or mental handicap, work should be regarded from a therapeutic aspect (ergotherapeutics).

4. When the law allows of an earlier release, the way in which prison labour is performed by the prisoner must be one of the factors taken into consideration, or may even bring about an automatic reduction of his sentence.

5. Methods of prison work should resemble as closely as possible those of work outside, going as far as complete assimilation or integration. To this end it would be highly desirable to set up in each country a joint co-ordinating committee consisting of representatives of the authorities and of the bodies concerned with production problems including representatives of industry, of agriculture, and of the workers.

6. In countries where labour planning exists, prison labour must be integrated in the plan. Systems of co-operative management of prison labour existing in certain countries should form the subject of a more extensive study.

7. It is essential, for the implementation of these recommendations that the public should be better informed on the nature and aims of prison labour.

8. **Specific questions regarding integration can be considered from the vocational training, prison labour and remuneration angles:**

(a) **Vocational Training:** (i) Vocational training, as also the education needed to acquire it, are indispensable factors in setting certain prisoners to work and must be based on the same programmes and lead to the same diplomas as those awarded in educational and vocational training centres in the outside world. Steps must even be taken to make attendance at such centres outside the institution possible in certain cases.
(ii) As regards adult prisoners who are forced by circumstances to change their trade or occupation, it would be advisable in particular to adopt accelerated vocational training methods, applicable especially to prisoners serving fairly short sentences.

(b) **Prison Labour:** (i) It is the duty of the state to ensure the full employment of able-bodied prisoners, first and foremost by encouraging public authorities to place orders.

(ii) Prison labour must be performed in conditions similar to those of free labour, in particular with respect to equipment, hours of work and protection against accidents. The social security measures in force in the country concerned must be applied to the fullest extent possible.

(iii) The system of individual placement in semi-liberty or week-end detention would help to bring about this type of work. The open prison system is already a forward step in this direction.

(iv) Work performed within the prison system, whether organised by the Administration, by private employers or even with the participation of the prisoners, must necessarily include different types of employment corresponding to the movement of the labour market. However the work is organised, prisoners must in every case be under the sole control of the Prison Administration. The number of prisoners assigned to domestic work for which no qualifications are required must be reduced to the essential minimum.

(v) To achieve the above objectives, the United Nations Secretariat is invited to organize the exchange of information and, if necessary, technical assistance on methods of organizing and financing prison labour in the different countries.

(c) **Remuneration:** (i) The principle of remuneration for prison labour was affirmed in Rule 76 of the Standard Minimum Rules for the Treatment of Prisoners.

(ii) The payment of token remuneration to prisoners doing productive work is incompatible with current theories on prison treatment.

(iii) The establishment of a minimum wage would already be a step forward.

(iv) The final aim should be the payment of normal remuneration equivalent to that of a free worker, provided output is the same both in quantity and in quality. For this purpose, prison work must be organized in an economic and rational way.

(v) From now onwards such remuneration must be demanded from private employers for whom prisoners work.

(vi) Such a system of remuneration must be applied to all prisoners doing productive work, including those employed in domestic work, whose remuneration should be regarded as a charge on the regular budget of the Prison Administration.

(vii) The payment of normal remuneration does not mean that the total remuneration is paid to the prisoner; deductions can be made by the Administration to cover part of the cost of maintenance, the indemnification of the victim, the support of the family and the constitution of a savings fund against his release, and any taxes to which he may be subject. Those deductions should not, however, prevent the prisoner from retaining a portion of his wages for his personal use.

D. SPECIAL RESOLUTION

On the occasion of the final meeting of the Plenary Session of Congress, **the following resolution was passed unanimously,** by all official delegations and all other participants, including individual members :

"WHEREAS the Second United Nations Congress on the Prevention of Crime and the Treatment of Delinquents has once again demonstrated the immense importance of the problem of crime and juvenile delinquency to the participating countries and territories;

"WHEREAS the continued grave concern with those problems on the part of the countries and territories represented and their ever broadening participation once again has been made apparent;

"WHEREAS the importance of communication, the sharing of experiences and discussion and study in an effort to alleviate those problems have been again convincingly brought forth :

THE CONGRESS also RESOLVED TO URGE THE UNITED NATIONS :

1. That there be no lessening of support, leadership and programme in the area of Social Defence, but that on the contrary, there should be distinct strengthening of the facilities available to all countries and territories;
2. That in accordance with the Economic and Social Council Resolution, No. 731 F (XXVIII), the reorganisation of the Section of Social Defence and the division of responsibilities between the United Nations Headquarters and the European Office should be such as to ensure that there is no reduction in the effectiveness of the overall programme and leadership and that the direction and co-ordination of the Social Defence Programme continue at Headquarters; further, it is suggested that the situation be reviewed in twelve months with the co-operation of those international organisations directly interested in the prevention of crime and the treatment of offenders."

E. A FEW CONCLUDING REMARKS

The immense scope of the work done at the London Congress may appear to some of our readers, as it appeared to some participants, unwieldy, and at times, far removed from realities. I think that this view is quite wrong. It is true that much of what we had to hear was not always relevant, that, at times, we felt very tired by the way in which almost every country seemed to consider only those problems which affected them directly. But anyone who has had long experience of such Congresses knows well how very important they are. Some of the principles they establish may seem unlikely to be considered by a number of countries for a long time to come; **but those principles have been stated,** and their reasonableness has been clearly established. We have seen

very clearly in South Africa how a progressive Department, under the leadership of progressive Officials and the guidance of a progressive Minister, have been helped by the formulation in the past of such specific lines of policy by competent people.

Writing from Europe, on the welcome occasion of a longer stay on the Continent than has been allowed him for a long time, your Director would like to draw your special attention to a few of the most important issues raised by the findings of the London Congress, and on a later occasion, when he deals with The Hague Congress, which was in some ways a still greater experience because of the homogeneity of membership of informed and largely expert personnel, he will do the same on the subject of Criminology.

Firstly, in spite of the fact that the UNO Congresses are forced into a pattern of official consultation between governments, we may express our gratitude that, in matters of important principles, individual participants have not only been allowed to express their views, but also to vote. The problem of individual participation in such Congresses is not an easy one for the organizers, but the specific value of the intervention of unbiased informed persons has been given due recognition, the only hitch being that so many are tempted to intervene who have far too little information to do so. — **We believe that the time has come for the Penal Reform League of South Africa to ask to be considered by the UNO as one of the Specialized Agencies, consulted by the UNO on the same basis as the Howard League, and others.**

Secondly, we think that the most important contribution of the London Congress to penitentiary sciences is the very clear and lucid examination it made of Prison Labour. Under the unique guidance of Pierre Cornil of Belgium, who is one of the best chairmen to be found, this Congress produced a charter of Prison Labour which will, we think, be a guiding light for quite a long time to come. We would therefore ask our members, as also all our readers among our Magistrates, our Judges, our Bantu Commissioners and Social Welfare Officers, kindly to pay special attention to the detailed wording of the findings of this Congress on this so important subject, which covers the whole field of self-rehabilitation, true compensation to victims of crime, the possibility for a wrong-doer to restore the respect of his own family for him by supporting them, at least in part, etc. Very often, resolutions and findings sound like pious phraseology, but in those findings, I can see no such fine sounding words, but on the contrary a true constructive programme of rehabilitation. — Again, it seems to me, far away as I am at the moment from South Africa, that if such a programme could be adopted, under the fine present leadership of the Commissioner of Prisons, with a real awakening of conscience among the workers outside in their trade unions, understanding that the man imprisoned is a worker as they are, — we may see the development of a rehabilitative system in our prisons that may well become a pattern of future development for other African nations.

Thirdly, the findings of this Congress concerning the special role of the Police in the Prevention of Juvenile Delinquency come to us, in South Africa, at a very appropriate time. We are sure that, if the schemes developed by the Police in the U.S.A. could

be accepted by our own Police in that sphere, great developments in co-operation with all the voluntary agencies interested could take place.

We may also take heart in noting the conviction of this Congress that economic development and migrations are by no means a necessary drive into criminality, and may, if properly led, produce the very reverse.

At the moment of sending this report to South Africa, and thinking of a further report to be prepared on The Hague Congress, we express to all our members a gratitude and appreciation that are beyond the words we could find. It is their support and understanding that rendered these valuable contacts possible. In spite of the grave events in Central Africa, we remain convinced that only Law and Order, Justice and Humanity will form the basis of the civilised Africa of the Future, and we re-dedicate ourselves to the great task outlined by Dom Sebastiao de Portugal: "Root out greed from the hearts of men, and favour those who lie on the ground because of such greed."

H. P. JUNOD.

Geneva, 26.9.1960.

THE TSOTSI PROBLEM

The White press often makes mention of the problem of "ducktails". In the present article a young African describes the parallel problem in the African community — that of "tsotsis". The writer does not judge or condemn; he merely describes what he sees. In a following article he will give the basic causes of tsotsism as also its remedies.

The tsotsi is youth in decay; he is problem number one in African urban townships.

On the 21st of July last year I was travelling from Faraday Station to Pimville. Suddenly a gang of young fellows appeared from the adjoining coach. "Here is one of them," they said pointing at a gentleman, sitting a little distance from me. We knew that trouble had begun. Disregarding their victim's frantic pleas, they threw him out of the train which was travelling at full speed. He died from the injuries he sustained. We later learned that he was thus brutally handled because he was wearing a neck-tie and therefore looked like a teacher — a goodie-goodie we should say in English. Something identical nearly happened to me too while I was working at the Radio Exchange in the Summer of 1956. Fortunately I was not thrown out; I managed not to panic but to "psychologise" my way out, though I had already been pointed out by four thugs with the same very ominous words: "Here is one of them." I am not mentioning these incidents to show that the tsotsis hate teachers. No. The

incidents merely illustrate the fact that they have set up a reign of terror in our townships. Such happenings can be multiplied without end; they are daily occurrences in our urban areas. In spite of control measures applied by local authorities these youths are constantly improving and perfecting their crime technique in order to intimidate members of their own race and to defy and undermine authority in every possible way. Indeed at sunset people heave a sigh of relief when once they are safely in their little dwellings, the good Lord has spared them the dangers of the day. The tsotsi problem is very alarming.

All over the globe the problem of juvenile delinquency is the order of the day. In America, Italy and France — to quote but a few places — social workers, psychiatrists, psychologists, sociologists and a myraid other "ologists" are battling day in and day out to find remedies for this unprecedented terror. Juvenile delinquency is much the same everywhere; it is a social question manifesting the same evils: stealing, wounding, rape and murder. In spite of these similarities the causes are often not identical. The problem of African juveniles in urban areas is unique in its way. It is caused primarily by the injustice to the Bantu of the Whites — "man's inhumanity to man" and by the transition of the African to Western Culture, as we shall see.

The name "tsotsi" is a familiar enough term in the country — it formerly indicated a pair of drain-pipe trousers and also a person following the mode of life which seems to go with these queer trousers. It is derived either from "ho tsotsa", to sharpen (Southern Sotho) or from zoot suit, a fashion originating with an American gang. To-day the name is taken by all to mean a criminally inclined urban African youth. The tsotsis also call themselves "majita" from "Magic Garden", a film depicting criminal life. The investigating committee of Duncan Village, East London, defines tsotsis as gangs of juveniles, the members of which are predominantly unemployed and are characterised by the fact that they wear the same distinctive clothing, make use of the same secret language, have a strong group consciousness and live largely by illegal means.

Formation of Gangs:

The gang is the last stage of tsotsism. There are roughly three stages through which the youths travel: before they enter the criminal courts. The first category is that of the learners or "laities", as they call them. It is composed of boys below the age of twelve who roam about the location streets playing childrens' games and frequenting the bioscope, but they already display evil tendencies mainly confined to minor thefts in cafes and greengrocers' shops. They play dice for pennies and pencils, smoke benzine and build up a crust of resistance to parents and society. Some of them are still at school though they attend as suits themselves; others have virtually abandoned school and have part-time jobs as caddies on the golf course or carriers in the market and hundreds of them sell sweets, monkey nuts, shoe laces, ladies' earrings and cosmetics in trains, buses, sports grounds and other public places. They are learners; the older tsotsis often send them to buy dagga, to spy and do many other things which are part of tsotsi training. This stage is very enticing to the young; you have your money from selling things, you can consequently put on long trousers, smoke cigarettes, and have people turning a blind eye upon your independence because you enjoy the protection of the big boys. Nearly every small boy passes through this stage though not all in the extreme way I have just outlined.

(To be continued)

"Criminology, in its narrow sense, is concerned with the study of the phenomenon of crime and of the factors or circumstances — individual or environmental — which may have an influence on, or be associated with, criminal behaviour and the state of crime in general. This, however, does not, and should not, exhaust the whole subject matter of criminology. There remains the vitally important problem of combating crime. The systematic study of all the measures to be taken against crime in the spheres of prevention (direct and indirect), of legislation, of the enforcement of the criminal law, of punishments and other methods of treatment, constitutes an indisputable and integral part of criminology. To detach this practical aspect from criminology is to divorce the latter from reality and render it sterile. The individual entity of criminology lies in the peculiar purpose that brought it into existence: namely, the study of the phenomenon of crime, of its conditioning, of its prevention and of its treatment."

Leon Radzinowicz, LL.D., in his address on *Criminological and Penological Research*: 11.8.1960.

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