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REPORT

ON

PROSECUTION

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REPORT

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PROSECUTION

PRELIMINARY

In the President's inaugural address of March 4, 1929, in speaking of criminal justice, he said:

> Justice must not fail because the agencies of enforcement are either delinquent or inefficiently organized. To consider these evils, to find their remedy, is the most sore necessity of our times.

One of the major tasks, therefore, which has devolved upon us is that of initiating a critical examination of the administration of criminal justice in the United States to ascertain whether, wherein, and for what reasons it fails to attain that quality and efficiency which would cause it to do its part in the prevention or reduction of crime, and to point out some of the directions of change in the organization, methods, and basic principles of criminal justice which would give promise of higher standards and greater success in dealing with crime and with the offender.

The first step in the performance of this task seemed to us to be the discovery and concise statement of the existing knowledge and information on these subjects. During the past 10 or 15 years a number of expert surveys of the administration of justice have been made by various agencies, official and unofficial, in a number of States, cities, and districts in the United States. We conceived that an analysis of the information and recommendations contained in these surveys and a statement of the lessons which could be drawn from their data and discussions would afford the most effective means of giving to the American public something in the nature of a summary of the existing authoritative knowledge on these subjects and of establishing a starting point from which some conclusions might be drawn as to the directions of reform of the administration of criminal justice, accompanied by an indication of subjects appropriate for additional research.

For this study we enlisted the services of Alfred Bettman, Esq., of Cincinnati, Ohio. Mr. Bettman is and for something over 30 years has been in the active and successful practice of the law. In addition to this private practice, he has had extensive contacts with the administration of the law as city solicitor of Cincinnati, assistant prosecuting attorney of Hamilton County, Ohio, and special assistant to the Attorney General of the United States, in which last capacity he was attached to the Department of Justice during the war period. He was a member of the group which made the Cleveland survey in 1921, and is a member of the group which, under the auspices of the Harvard Law School, is making a similar survey in Boston, and in these capacities has had wide experience in the application of research methods to the problems of the administration of criminal justice.

Mr. Bettman's report, entitled "An Analysis of the Surveys of the Administration of Criminal Justice Relating to the Subjects of Prosecution and Courts," is appended hereto. We consider it a thorough and keen analysis of the existing learning in the field covered by the report, and an able statement of some of the major conclusions concerning the organization, methods, and basic principles of criminal justice, in the light and direction of which specific reformative steps should be taken.

As is pointed out in Mr. Bettman's report, in the past discussion of the subject of crime and the offender, a relative overemphasis has been given to those matters which relate to the trial of the question of guilt or innocence, such as the technicalities of trial procedures, the composition of juries and the like. The statistics presented in the report show that, as a matter of fact, criminal cases are predominantly disposed of by methods and agencies other than jury trial, and that the phases or subjects to which greater emphasis and attention need to be directed are those concerned with administration, such as caliber and qualifications of judges and prosecutors, and the structural organization, equipment, and working and office methods of courts, prosecuting, and other public agencies engaged in criminal justice.

Furthermore, Mr. Bettman's report brings out convincingly, in our opinion, the fundamentally important fact that the effectiveness of criminal justice as a reducer, preventive or deterrent of crime will turn mainly upon the intelligence with which the principles governing the punishment, disposition or treatment of the convicted offender are determined and carried out. As is pointed out in the report, the criminal tendencies of the individual generally display themselves early in his life and are often first manifested by acts of a nature which we think of as minor offenses before he progresses to graver ones. The criminality of any individual has causes in his physical make-up, his personality, or his environment, or in all of them, and the problem of molding him, if possible, into a law-observing and socially adjusted person is one involving a thorough study of him as an individual, of his environment, and of the form of punishment, disposition or treatment which would give promise of beneficial results.

Consequently the primary aim of changes in the structural organization, methods, and principles of the public agencies dealing with crime and the offender must be that of formulating and developing such forms of organization, such working methods and principles, such administrative practices, and such basic penal or treatment conceptions as will enable these public agencies to discover the offender at an age and time when he may still be in the formative stage as regards his personality and character and to apply to each individual case that disposition or treatment which fits that individual's problem and gives promise of the desired results.

The material contained in Mr. Bettman's report will, we believe, furnish legislators, crime commissions, law schools, research institutes, bar associations, and the public generally with starting points for the working out of specific measures leading to the accomplishment of this aim, as well as an enumeration of some of the subjects which require further fact gathering. It should be added, however, that the appended report deals incidentally with some subjects upon which the commission will later publish special studies.

As to these no opinion is expressed at this time. On these disputed points, so far as the separate reports of experts can not be reconciled, it will be necessary to reach conclusions in other reports.

In addition to the work of Mr. Bettman, the voluminous literature as to prosecution in English-speaking lands has been gone over and investigation has been made of the current American law reports, State and Federal, for the light they throw upon the questions considered. A bibliography of prosecution by Mr. Julian Leavitt, research consultant to the commission, is also appended to this report.

I. THE PUBLIC PROSECUTOR

(a) THE ORGANIZATION OF PUBLIC PROSECUTIONS

i. *Prosecution in Seventeenth-century England and in the Colonies.*—By the common law of England, which was brought to America by the colonists, the ordinary criminal prosecution was conducted by a private prosecutor in the name of the King. In case the victim of a crime, or some one interested, came forward to prosecute, he retained his own counsel and had charge of the case as in an everyday civil proceeding except that the Attorney General, as the representative of the King, might refuse to allow it to go on. Along with this system of private prosecution there were prosecutions at the instance of the Crown, either by the law officers of the Crown procuring indictments, or in proper cases, filing an information, and proceeding as in any other criminal cause. The English system was so completely adapted to the modes of a private prosecution that to-day when the director of public prosecutions or the police institute or take over a prosecution, the law conceives of their powers as merely those of a private prosecutor.

Bad features of this system of private prosecution were pointed out by Lord Chief Justice Hale in the seventeenth century. It was not until 1879, however, that England established a director of public prosecutions. On the other hand, in the first years of the eighteenth century, the Colonies began to do away with private prosecutions and set up public prosecutors. The first statute was enacted in Connecticut in 1704, as follows:

* * * Henceforth there shall be in every countie a sober, discreet and religious person appointed by the countie courts, to be atturney for the Queen [this was in the reign of Queen Anne] to prosecute and implead in the lawe all criminals and to doe all other things necessary or convenient as an atturney to suppresse vice and immoralitie * * *.

This public prosecutor, given sole charge of all criminal causes, was quite unknown to English law. In Virginia, in the last quarter of the seventeenth century, the Attorney General had begun prosecutions by presentment in the county courts. In this, however, he was only doing what the law officers of the Crown might do in England. In 1711 county attorneys were commissioned in Virginia, and the example of Connecticut was soon followed in other Colonies. By the end of the century, official prosecutions by public prosecutors had become established as the American system.

Private prosecution was a medieval institution, going back to a time when the civil and the criminal were not well differentiated and the chief purpose of the law was to preserve the peace by providing an orderly substitute for private vengeance through proceedings in the courts. In France, as a result of the development of royal power, prosecutions became official; and the public prosecutor as an ordinary institution, completely established by the seventeenth century, has been justly pronounced "one of the best creations of the French genius." The influence of the French *procureur du roi* in giving final shape to the American institution of an official prosecutor is obvious. After the Revolution, especially in the era of rising Jeffersonian democracy, things English were for a season discredited and things French regarded with enthusiastic interest. The American official prosecutor, Federal and State, is a compound of the English attorney general and the French avocat general and procureur du roi, on the basis of the colonial county attorneys.

ii. *The Federal prosecuting system.*—An Attorney General was provided for by a statute of 1789. He was to be "a meet person learned in the law to act as Attorney General of

the United States." He was to "prosecute and conduct all suits in the Supreme Court of the United States in which the United States might be concerned," and to give advice and opinion upon questions of law when "required by the President of the United States" or "requested by the heads of the executive departments." It will be seen that the office was at first much more restricted in its scope and powers than that of the English attorney general. For example, the conduct and control of Federal prosecution and litigation was confined to causes in the Supreme Court of the United States. Indeed, till 1853 the Attorney General did not reside at the capital and was in private practice. There was nowhere any general, organized control of Federal prosecutions.

United States district attorneys were provided for in the judiciary act of 1789. The statute, in language in which one may trace an echo of the Connecticut act of 1704, made provision for the appointment in each district of "a meet person learned in the law to act as attorney for the United States," and made it his duty to "prosecute in each district all delinquents for crimes and offenses cognizable under the authority of the United States." But down to 1861 these district attorneys were legally and actually quite independent in the conduct of their office. In 1861, because of the exigencies of civil war, the Attorney General of the United States was given by statute "superintendence and direction of United States attorneys and marshals in all districts of the United States." In 1867 the Attorney General in his report recommended that his office be made "the law department of the Government, thereby securing uniformity of decision, of superintendence, and of official responsibility." This was done by statute in 1870, establishing the Department of Justice, and providing for a Solicitor General and three assistant attorneys general. There had been an assistant attorney general since 1859. In 1896 a further centralization was achieved by legislation empowering the Attorney General to appoint assistant United States attorneys. But in practice it was not till after 1909 that control of Federal prosecutions by the Department of

Justice became wholly established. To-day there is a well-organized central control of Federal prosecutions, although the effective sanction of the superintendence conferred by law on the Attorney General is in the power of removal by the President. The several bureaus have a permanent personnel and hence continuity of administration. It is true the district attorney holds for but four years. But this seems wise, since it is important to have the Federal prosecuting officers responsible to the policies of the executive whose duty it is for the time being to see that the laws are enforced. On the whole, the mode of appointment and tenure and the dignity of the office have resulted in a satisfactory personnel. At times, however, an obstacle to effective control and efficient prosecution has been found in the power of the Senate with respect to appointments. The claim of the Senate not merely to exercise a collective power of rejecting unfit nominations but to dictate appointments as the patronage of the Senators of the State in which the district lies has often had a bad effect upon the personnel and conduct of the office. Also in States where the Senators are in opposition to the administration it happens too often that local political organizations insist on treating the office as political patronage, and thus deprive the President of the information and support he should have in order to make suitable appointments. The great powers of the district attorney under the continual extensions of Federal jurisdiction in the present century are giving increasing political importance to the office. Hence this treatment of it as a reward for political activity is a serious menace to enforcement of law.

iii. *The State prosecuting system.*—Although the organization of public prosecution varies greatly from State to State, the general features are fairly uniform and certain characteristics are all but universal. Nowhere is prosecution as well organized as in the Federal Government, and by and large the State systems are much less efficient and much less satisfactory.

There is an attorney general in each State. But usually he is like the Attorney General of the United States under

the act of 1789. There is seldom any effective central superintendence and control of prosecutions. There are no State departments of justice such as has grown up under the Federal Government. In a few States the attorney general has some control over local prosecutions. But the prevailing polity makes the local public prosecutor an attorney general in his locality. Indeed, in some States this independence of the local prosecutor has been carried so far that the prosecuting attorneys conceive they have no responsibility after appeals are taken, while the attorneys general in turn conceive that there is no need of their consulting with the prosecuting attorney when the appeals come to the higher courts in which the attorneys general have by law sole charge.

Various names are given to these local prosecutors in the several States.[1] It will be convenient to refer to them as

[1] The titles are as follows: Alabama, county solicitors, circuit solicitors. Arizona, county attorneys. Arkansas, prosecuting attorneys ofr each judicial district. California, district attorney for ——— County. Colorado, district attorney (judicial districts); county attorney. Connecticut, State's attorney for ——— County; prosecuting attorney (city). Delaware, deputy attorney general for ——— County. Florida, State's attorney for ——— circuit; county attorney. Georgia, solicitor general for ——— County; solicitor [city court]. Idaho, prosecuting attorney for ——— County. Illinois, State's attorney for ——— County. Indiana, prosecutor for ——— judicial circuit; prosecuting attorney for ——— County; district attorney (for cities). Iowa, county attorney. Kansas, county attorney. Kentucky, commonwealth's attorney for each of 37 judicial districts. Louisiana, district attorney. Maine, county attorney. Maryland, State's attorney for ——— County; State's attorney for Baltimore city. Massachusetts, district attorneys for eight districts; city prosecutors only for Springfield; other cities prosecute through police departments or city marshals. Michigan, prosecuting attorney for ——— County. Minnesota, district attorney for ——— County. Mississippi, district attorneys for 17 districts. Missouri, prosecuting attorney of ——— County; of city of St. Louis. Montana, county attorney. Nebraska, county attorney. Nevada, district attorney ——— County. New Hampshire, county solicitor. New Jersey, prosecutor of the pleas of ——— County. New Mexico, district attorney. New York, district attorney for ——— County; county attorney. North Carolina, solicitor ——— County. North Dakota, State's attorney. Ohio, prosecuting attorney ——— County; Oklahoma, county attorney. Oregon, district attorney ——— County. Pennsylvania, district attorney of ——— County; solicitor. Rhode Island, no local prosecutors. South Carolina, solicitors for 14 judicial circuits; two county solicitors; two prosecuting attorneys (Greenville County, Orangeburg County). South Dakota, State's attorney for ——— County. Tennessee, district attorney general for ——— judicial circuit. Texas, district attorney; county attorney. Utah, district attorneys for seven judicial districts; county attorneys. Vermont, State's attorney for ——— County. Virginia, commonwealth's attorney for ——— County. Washington, prosecuting attorney for ——— County. West Virginia, prosecuting attorney for ——— County. Wisconsin, district attorney for ——— County. Wyoming, county and prosecuting attorney.

prosecuting attorneys. Typically these prosecuting attorneys are in the State polity what the Federal district attorneys were in the Federal polity before the act of 1861 and the subsequent organization of the Department of Justice. They are as a rule independent and responsible only to the local electorate. Being elective officers, usually for relatively short terms, they are likely to be deep in politics. In recent years in the large cities the direct primary has had a noticeably bad effect upon this office. In many localities the most competent members of the bar are unwilling or reluctant to undergo the ordeal of nomination by this method and in the ordinary large city the voters are in no position to judge of the professional qualifications of those who present themselves for nomination. Of late, however, some corrective has been found in the activity of bar associations in advising the public as to the professional standing and qualifications of candidates and opposing unfit candidates.

In the States the great majority of those who are apprehended for violations of law never come to trial. Their cases are disposed of by the prosecuting attorney. In every way he has much more power over the administration of criminal justice than the judges, with much less public appreciation of his power. We have been jealous of the powers of the trial judge, but careless of the continual growth of power in the prosecuting attorney. His office is the pivot on which the administration of criminal justice in the States turns. It is important, therefore, to perceive the bad features which have resulted from persistence of the system of decentralized local public prosecution, adapted to the pioneer rural society of the last century, in the great urban industrial centers and unified country of to-day.

Taking the country as a whole, the features which chiefly operate to make the present-day criminal justice in the States ineffective are: Want of adequate system and organization in the office of the average prosecutor, decentralization of prosecution whereas law and order have come to be of much more than local concern, diffusion of responsibility, the intimate relation of prosecution to politics, and in many

jurisdictions no provision for a prosecutor commensurate with the task of prosecution under the conditions of to-day.

Want of system and organization and particularly want of continuity of administration are serious defects in the office of the average American State prosecutor. The prosecuting attorney has or undertakes to exercise four quite different functions, namely, the function of a criminal investigator, concurrently with the sheriff or police and the coroner; in substance the function of a magistrate in determining who shall be prosecuted and who brought to trial and who not; the function of a solicitor in preparing cases for trial; and that of an advocate in trying them and in arguing appeals. There is very much more here than any one man may expect to do in the large city of to-day. This task, even if reduced to its proper limits, would still involve so many different kinds of activity that there must be a thoroughly organized office, with a permanent staff and well-planned division of labor, a definite assignment of responsibility, and a well-devised and well-kept system of records. As the position is elective for a short term, there is little opportunity to organize the office adequately, and it is seldom on a basis at all comparable to the organization of the legal department of a public utility or of a large private corporation. Very likely in our democratic polity the position may remain elective for short terms in order to make one upon whom so much depends amenable to public opinion as to the conduct of his office. But sooner or later we must impose less of the burden of choice on the electorate and concentrate responsibility for good government. In the meantime the organization of which the prosecuting attorney is the head for the time being should have permanence and continuity. Control over assistants by appointment for the term of the prosecutor, treating the positions as political patronage, is often only nominal. The reality of control is in proper organization. The staff of assistants, at any rate, should be permanent, permitting of specialization, insuring experience, and making possible an effective division of labor. With such an organization and properly kept records there would be definitely located responsibility where there is now no more than a theoretical general responsibility of the prosecuting attorney to the electorate. The public can know but little of what actually goes on in the administration of the office, and responsibility is easily lost among the large number of assistants with no clearly defined powers and duties.

Even more important, with a permanent staff and proper organization there would be continuity of administration. In many cities with each new incumbent of the office, and so at regular intervals, a wholly new set of assistants come in. The most important of a prosecutor's duties may devolve upon these assistants. They come in wholly unacquainted with the pending cases. Often they are quite without experience of what they are to do. Thus they are for a long time in no position to cope with experienced and resourceful professional defenders. By the time they have acquired experience, they are likely to be superseded by a change of political control. The continual and rapid turnover among assistants as well as at the head, and want of any continuous experience, give a great advantage to the habitual practitioner in criminal cases which is enhanced by the latter's connection with local politics and his ability to bring political pressure to bear upon those whose political tenure is uncertain and dependent upon politics.

In the formative era we had a great and justified fear of centralization. But overdecentralization may be quite as bad as overcentralization. Under the conditions of transportation to-day and with the facilities for and coming of highly organized crime, the State is as natural a unit as the county or town was a century ago. Respect for law is jeopardized and enforcement of law made ineffective by conflicts between State and local authorities in time of industrial disputes, local riots, and locally unpopular State laws, such as we have had too much of in many parts of the land. When but little in the way of administration was needed and legislative regulations were relatively few, occasional exercise of local private judgment as to enforcement of laws of state-wide application did little or no harm. With the coming of great urban centers, the rise of industrial communi-

ties, and the development of communication and transportation, this private judgment on the part of local officials has become an obstacle to efficient administration. In more than one State refusal of local prosecutors to enforce State laws in the locality led to legislation providing for removal by some central authority long before the national prohibition act. But this is a crude substitute for a control over prosecutions by a central responsible office, beyond the reach of local politics, analogous to what obtains in the Federal system.

One reason for the ineffectiveness of the general public criticism of American criminal justice, which has gone on vigorously in the present century, is the diffusion of responsibility which makes it difficult or impossible to hold any definite person or office for serious fallings short of what the existing machinery of justice might well do. When grave crimes are committed in a large city, attracting the attention of the whole country, responsibility for criminal investigation and detection of the offender may fall down between police or sheriff, prosecuting attorney's office, and coroner. Responsibility for initiating prosecutions may fall down between prosecuting attorney, grand jury, and police. Responsibility for conducting prosecutions frequently falls down among a corps of more or less independent assistants with no record to show exactly who did what. Responsibility for ineffective presentation of the State's case may fall down between an outgoing and incoming prosecutor and their assistants. Responsibility for failure to present properly the State's case on appeal from conviction has been known to fall down between the office of the attorney general and that of the prosecuting attorney. This want of a defined and exactly located responsibility plays into the hands of habitual offenders and enables them to procure results which could not be had under a well-organized prosecuting staff with permanent tenure, subject to central control, and under defined responsibility.

Criminal justice and local politics have an intimate connection which aggravates the bad features of State prosecution already considered. Notoriously this connection between the prosecutor's office and politics is the bane of

prosecution. There is a close connection between corrupt local political organizations and criminal organizations. The former exploit and the latter organize law breaking and vice. Campaign funds are derived from what amounts to licensed violations of law. Often such things, however, can not go far under an efficient system of administering criminal justice. Hence it is vital to a combination of corrupt politics and organized crime to control the prosecutor's office, or if that can not be done, to render its activities nugatory. Thus the prosecutor's office, with its enormous power of preventing prosecutions from getting to trial, its lack of organization, its freedom from central control, and its ill-defined responsibility, is a great political prize. Under the political conditions which obtain in large cities, except for occasional outbursts of popular indignation, prosecutors are likely to be selected with reference to the exigencies of political organizations rather than with reference to the tasks of law enforcement. The system of prosecutors elected for short terms, with assistants chosen on the basis of political patronage, with no assured tenure yet charged with wide undefined powers, is ideally adapted to misgovernment. It has happened frequently that the prosecuting attorney withdraws wholly from the courts and devotes himself to the political side and sensational investigatory functions of his office, leaving the work of prosecution wholly to his assistants. The "responsibility to the people" contemplated by the system of frequent elections does not so much require that the work of the prosecutor be carried out efficiently as that it be carried out conspicuously. Between the desire for publicity and the fear of offending those who control local politics, the temptation is strong to fall into an ineffective perfunctory routine for everyday cases with spectacular treatment of sensational cases.

Finally in too many States the office is not one of sufficient dignity and salary in view of the difficulties of prosecution and the powers of the prosecutor. In too many jurisdictions each county has a prosecutor, although there is not enough business in the county to procure a lawyer of sufficient capacity to prosecute efficiently. Consequently the place is

filled by ambitious beginners as a stepping-stone to practice. Effective enforcement of law can not be achieved by leaving to beginners one of the hardest of forensic tasks to be performed against experienced defenders.

It is significant that in more than one large city reliance is had on the Federal prosecuting machinery to maintain local law and order. The extensions and attempted extensions of Federal criminal legislation in order to make possible more effective prosecutions of larcenies and receivings of stolen property are also significant. In the report on enforcement of the prohibition laws of the United States we called attention to a like tendency to leave enforcement to the Federal Government on the part of States which had and enforced prohibitory laws before the eighteenth amendment. Ineffective organization of the State prosecuting machinery is a considerable factor behind this obviously undesirable tendency.

(b) THE PROSECUTOR AS A CRIMINAL INVESTIGATOR

It has been pointed out in another connection that the American public prosecutor besides the function of preparing criminal causes for trial and trying them in the courts, has what is substantially a magisterial function of determining what offenses shall be prosecuted and what prosecutions shall be proceeded with, to be considered presently, and also a function of general criminal detection and investigation. The latter function goes back to the Connecticut statute of 1704, in which it was provided that the county attorney should not only prosecute offenders before the courts but also do "all other things necessary or convenient * * * to suppress vice and immoralitie." This uniting of a general responsibility for enforcement of law and duty of criminal investigation with the function of carrying on prosecutions was appropriate enough in a simple colonial society of the eighteenth century. In the large city of to-day it is another matter. The authority to dismiss prosecutions, inherited from the English attorney general, gives the prosecutor enormous power in view of the crowded dockets of to-day. The function of general law enforcement and criminal investigation entails a very heavy responsibility, concurrent with that of sheriff and police as to enforcement, and of sheriff, police, and coroner as to criminal investigation. There is too much here for one official. For one thing, the diffused responsibility has bad results. For another, too much friction and waste is involved in the overlapping of functions and in concurrent investigations and conflicts in cases of sensational crimes and disasters. For another, the possibilities of publicity in criminal investigation lead to distraction from the primary work of prosecution and devoting of too much energy to the task of other and specialized agencies whenever offenses are committed which attract public attention. When this is done at the expense of the special function of prosecution in the courts, under the condition of crowded dockets which obtains in all large cities to-day, efficiency is obviously much impaired.

The line between investigations appropriate to the prosecutor's office and the general work of detection and criminal investigation is not well understood and special study should be devoted to this subject in order that an intelligent division of labor and allocation of responsibility may be made.

In the typical American State polity, police, sheriff's office, coroner's office, and prosecuting attorney's office are wholly independent. Each may and often does conduct its own separate investigation of the same crime. They cooperate or cross each other's tracks or get into each other's way as they like. Each is independently responsible; the police to a municipal authority or a State commission; the sheriff, coroner, and prosecuting attorney to the people. Often each is quite willing to score at the expense of the other. Not infrequently each is unwilling to aid the other as a rival candidate for publicity. The country over there is frequent and characteristic want of cooperation between the investigating and the prosecuting agencies in the same locality. A prosecutor may work with the police or not, and vice versa. Many examples have been found of these public agencies at cross-purposes or at times even actively thwarting one another, with no common head to put an end to such unseemly and wasteful proceedings. The remedy

has been taken to be in awaiting the coming round of the next election and perhaps voting against both parties to the clash. But, as things are, both are likely to feel that the publicity has a distinct value toward reelection. Nor are things always better as between local prosecutors and local courts. We have come upon several cases where courts and prosecutors have had different conceptions of the policy of the law, or different policies with respect to law enforcement, and have pursued conflicting courses. Also from time to time there have been scrambles between Federal and State prosecutors for the custody and disposition of persons accused of violating both Federal and State laws in the conduct of a business as to which public opinion has been aroused. No good results can come from having the prosecutor's office overlap the functions of the police at one end and those of magistrates at the other. That police and prosecuting attorney are clashing over the investigation of a sensational crime and that a judge has "scored" a district attorney or a prosecutor has denounced the laxity of a judge—things to be read every day in the press—do much harm to respect for law as well as to the efficient administration of justice.

(c) THE PROSECUTOR'S DISCRETION AND ITS EFFECTS

In the nineteenth-century American polity the tendency was strong to tie down administrative discretion at every point. This was true especially with respect to the discretion which a judge must necessarily exercise on the administrative side of his office. Judicial discretion was jealously limited. But in the meantime a common-law check upon prosecution had grown into a wide discretionary power of prosecutors, which, under the conditions of administering criminal justice in the urban industrial centers of to-day, has made the prosecuting attorney in substance, although not in legal theory, a magistrate determining in such way and on such grounds or want of grounds as he sees fit, who shall be tried in court and who not.

As has been said, in the English common law prosecutions were ordinarily private. Hence a necessary check existed in

the power of the Attorney General, as representing the Crown, to inform the court that the Crown was unwilling to prosecute and so bring the private prosecution to an end. This could be done at any stage of the proceeding down to the final judgment of conviction. In America the power passed to the prosecuting attorney as a local attorney general. At common law exercise of this power is beyond control of courts, and American courts have in general adopted the common law in this respect. As one court puts it, the power is "absolute." The prosecutor "is not even required to give a reason for his dismissal." In some States by statute reasons are required to be put on file and in some by statute or long judicial practice leave of court must be had. But in practice, with the crowded dockets of the modern city, these checks have been applied perfunctorily and are achieving little or nothing. In origin a public check on private prosecutions, when private prosecutions came to an end and all prosecutions became public or official it ceased to be a check and became an additional mitigating or dispensing device. In practice in most of our large cities it is a mode of disposing of criminal causes without trial and without review on grounds nowhere recorded and quite unascertainable. When the number of prosecutions instituted each year has become enormous and beyond the possibilities of proper trial, the power of nolle prosequi, as a means of selecting those to be tried, makes the prosecutor the real arbiter of what laws shall be enforced and against whom, while the attention of the public is drawn rather to the small percentage of offenders who go through the courts. Thus the blame for nonenforcement may easily be misplaced. Habitual defenders of criminals have learned to take advantage of this power. Where exercised by assistants under no responsible organization it lends itself to the quiet choking off of prosecutions under political influence. It is an anomaly that the powers and discretion of the judge with respect to the small percentage of prosecutions which ever come before him should be so thoroughly hedged about with restrictions, while this power and discretion of the prosecuting attorney with respect to disposition of the great majority of initiated prosecutions should remain so absolute.

It should be said, however, that a considerable discretion must always be vested in the prosecutor, as in any other administrative official. There will be no profit in attempting to tie him down rigidly but unintelligently with hard and fast rules with no regard to how they are to be applied. Moreover, much of the growth of the prosecutor's power of disposition has been due to the slipshod way in which cases are initiated by the police or other investigating agencies and the tendency to arrest first, and find a case, if at all, afterwards, which unhappily prevails in too many localities. The sifting which must be done somewhere, and in a proper system should be done at the outset, has had to be done by the prosecuting attorney.

It should be added that the general duty of enforcing the law in the locality, which was imposed on the prosecuting attorney by the original statute of Connecticut, has in many jurisdictions grown into something like a royal dispensing power. Often magistrates will not issue warrants without the approval of the prosecuting attorney. Often he gives it out that he will not enforce this law or that, and he is in a position to make his dispensing power effective by an absolute control of dismissals.

(d) CHECKS UPON PROSECUTION

In forming any judgment with respect to criminal prosecution, we must bear in mind the numerous and very serious difficulties with which the American prosecutor is beset in seeking to enforce the law in the urban industrial community of to-day with the machinery set up for the typically rural and usually pioneer community of from 150 to 100 years ago. We must not forget that the safeguards which experience has shown to be necessary for the protection of the innocent may at times be interposed as obstacles by the guilty. Three sets of obstacles, a series of mitigating devices, or opportunities of escape, many of them developed at a time when all serious offenses were punished with death, a series of constitutional guaranties of the rights of accused persons, growing out of the contests between the courts and the Crown in the seventeenth century, at a time when criminal procedure

bore hard upon the accused, and a long series of procedural requirements coming down from a time when substantive rights were not well defined and almost the only check upon judicial action was to be found in procedure, confront the prosecutor at every step. These mitigating devices, constitutional guaranties, and procedural requirements are often used as so many pieces to be played by habitual offenders in the game of criminal justice, and the practitioners in the criminal courts have become expert in playing them to defeat the ends of the law.

No less than 10 mitigating devices are to be reckoned with.

(1) At the outset there was at common law the option of the private prosecutor as to coming forward with an accusation, now taking the form of the discretion of the police or administrative agencies as to starting a prosecution. Obviously discretion must always exist at this point. But if it is not exercised, or is only occasionally and capriciously exercised, a heavy burden is laid upon the prosecuting attorney.

(2) Next there is the jurisdiction of the examining magistrate and his power to discharge the accused after a preliminary hearing. Manifestly the burden of the prosecutor is greatly increased if the examining magistrate commits indiscriminately, while enforcement of the law is relaxed if he discharges indiscriminately.

(3) The grand jury has the power to ignore charges and refuse to find indictments. Here again there may be a real sifting of accusations, or for the general run of cases it may be, where enormous numbers have to be prosecuted, a perfunctory routine in which the way in which cases are set before that body may be a useful means of disposing of them under the pressure of politics.

(4) The next device, nolle prosequi or dismissal of the prosecution, has been spoken of.

(5) Instead of dismissing, the prosecutor may accept a plea of guilty of a lesser offense than the one charged. Here, too, political pressure may be active, and there is no record of the reasons behind the prosecutor's action.

(6) If the cause comes to trial, the power of the trial jury to render a general verdict involves a wide power of dispensing with the law in particular instances, if that body chooses to do so, and no new trial can be had after a verdict of acquittal.

(7) After conviction there is the discretion of the judge as to sentence or as to suspension of sentence and probation.

(8) In some jurisdictions there may be a motion in mitigation after sentence, and in these there is a common practice of reduction of sentence on this motion. Here again political pressure may be encountered, and the continual turnover in the prosecutor's office and want of organization of the prosecuting system give advantages to the lawyer-politician who habitually defends.

(9) After commitment to prison may come parole.

(10) Finally, there is the executive power of pardon.

In the public mind the prosecuting attorney is charged with enforcement of the laws. But 6 of the 10 mitigating devices are beyond his control. If control of the other four give him very wide powers, yet those powers are largely necessitated by the loose way in which the work of criminal investigation and preliminary examination are likely to be done in the average large city, and the consequent devolution upon the prosecutor of what ought to have been done by others. That from 8 to 10 chances of escape are offered the accused between the committed offense and the serving of his term of imprisonment is a fundamental fact from which all consideration of this subject must begin.

A certain number of mitigating devices and opportunities of escape afforded to accused persons are necessary to a proper administration of criminal justice. Some of those above enumerated are among the best achievements of modern improvement of criminal procedure and penal treatment. Some result from long experience of what is needed to prevent or correct abuses in prosecutions. But some have grown out of conditions which no longer obtain, and some have been worked out by the ingenuity of practitioners in criminal causes with little justification as regular steps in a criminal case. Moreover, the newer ones have been

added to the older without taking stock of the whole as it now stands, and the very number of the steps at which the penalty fixed by law may be evaded constitutes a serious difficulty in the way of those who are seeking to enforce the law.

EIGHT CONSTITUTIONAL GUARANTIES ARE USUAL

(1) Very generally there is provision that no one is to be held for a crime involving death, or imprisonment in a State prison or penitentiary, or for more than a year, or at hard labor, except upon indictment by a grand jury. This will be considered in another connection.

(2) In all jurisdictions there is a guaranty that no one is to be put twice in jeopardy. Hence, while accused may have a new trial if there was prejudicial error in the proceedings leading to his conviction, or in most jurisdictions, if the reviewing court holds that the evidence is not sufficient to sustain conviction, the State can not secure a new trial, however erroneous the proceedings or unjustified the acquittal. A trial judge timid of reversal may rule in favor of the State with caution but against the State with unconcern. The prosecutor must watch each step with the utmost care. The defender may take any chance of procuring rulings in his favor with impunity.

(3) There is generally a guaranty that no one shall be compelled to be a witness against himself. He may take the witness stand in his own behalf if he chooses, but constitutions guarantee him a privilege of saying nothing at every stage and for the most part prohibit any comment by anyone on his exercising it. This guaranty will be considered further on.

(4) It is very generally provided that accused shall have a copy of the charge against him and the names of the witnesses on whose testimony he is accused.

(5) There is a guaranty that he shall be confronted with the witnesses at the trial. All witnesses against him must be examined and subject to cross-examination in court when he is tried. Thus as a general proposition there is no way of

using the evidence of absent witnesses or witnesses in other jurisdictions, as in a civil trial.

(6) Excessive bail is not to be required. An accused can compel admission to bail (if the offense is bailable) and have denial of bail or the fixing of excessive bail reviewed by habeas corpus or in some jurisdictions by appeal.

(7) All jurisdictions guarantee trial by a jury of the vicinage (that is, of the neighborhood where the act was committed) in case of all but petty offenses punishable by fine or a short jail sentence. Formerly it was generally held that in case of prosecutions for felony this right of accused to a jury trial could not be waived. But this doctrine has been rejected by the Supreme Court of the United States, and a number of States had long allowed even the most serious crimes to be tried by the court without a jury if the accused so chose. Where constitutions preclude or have been construed to preclude waiver of juries in criminal cases they should be amended. Where statutes stand in the way they should be repealed. The conspicuous success which has attended trials by the court, at the choice of the accused, in States where they have long prevailed, should convince the most fearful of the utility of a practice which has begun recently to extend to new jurisdictions.

(8) Everywhere there are guaranties—more strict in some jurisdictions than in others—against unreasonable searches and seizures, generally with provisions that search warrants shall issue only upon probable cause shown upon oath or affirmation and that they must particularly describe the place to be searched and the persons or things to be seized.

There are two sides to these eight guaranties. On the one hand it is of the first importance to secure the individual accused from the arbitrary action of officials and magistrates which all legal history shows us must be guarded against. There is a real need of assuring deliberation, as shown by more than one case of mistaken conviction under even the best of systems. There is a need no less real of public assurance that trials are fair as well as thorough and that the accused should feel he has been fairly and legally convicted.

The guaranties as to searches and seizures are often in the way of effective detection. But interferences with the home arouse resentments which have proved the importance of these guaranties. We must not be understood as in accord with those who would condemn all the guaranties in our bills of rights as anachronisms. Many of them have abundantly justified themselves as needed securities of individual liberty. On the other hand, the guaranty of indictment by a grand jury, as we shall show hereinafter, has ceased to serve a useful purpose, and another, the guaranty against examination of accused persons and prohibition of any reference to their failure to testify, has come to be of little advantage to the innocent and a mere piece in the game of criminal justice. In consequence it has contributed toward unfortunate practices on the part of criminal investigators and prosecutors, which operate unequally, lead to much resentment, and seriously injure respect for law.

Police and prosecutors feel strongly that they ought to be able to interrogate suspected and accused persons, and extralegal examinations by officials, with every appearance of legality, and extralegal preliminary examinations by prosecuting attorneys go on continually whenever the persons examined are ignorant or unadvised as to their rights or insignificant or without means of employing counsel and making effective protest. Thus, on the one hand, the guaranty is of advantage chiefly to the malefactor of means or the malefactor with an organization behind him, and, on the other hand, tempts criminal investigators and prosecutors constantly to unlawful means of enforcing the law. One can not properly appraise the reports on lawless enforcement of law, to be published by the commission in another connection, unless he bears in mind the difficulties under which detection and prosecution labor in view of constitutional guaranties and the conviction of officials that the guaranties against interrogation of accused persons are no more than a shield to malefactors able to avail themselves of it. The mischief in the present situation, apart from the disrespect for law which it breeds, is that the practice operates unequally and arbitrarily, that the extra-

legal examination is surrounded by no safeguards, and that it lends itself easily to serious incidental abuses. A legal examination of accused or suspected persons, before a magistrate, where counsel could be present to protect the party's rights, where the evidence could be taken down with guaranties of accuracy, and the abuses of the "third degree" obviated, would do away with the motive for unlawful extra-legal examinations and would protect the general run of accused persons much more effectively than the present system. But this would require constitutional amendments everywhere.

As to procedural difficulties surrounding prosecution, the American Law Institute has had the subject under consideration for some years and has put forth a Model Code of Criminal Procedure, accompanied by full data as to details of practice in the several States. In view of this full presentation and because the most serious deficiencies in American criminal justice are in other quarters, we content ourselves with reference to the commentary accompanying that code.

Not the least serious feature of the procedural difficulties which beset prosecution is that they are added to the obstacles already considered and aggravated by the type of lawyer who habitually defends in criminal causes in the cities and with whom the prosecutor must contend. When the multiplicity and diversity of functions imposed upon our prosecutors in our large cities is taken into account, when we reflect on the political pressure to which they are subjected, and note the need of publicity if they are to hold their office or gain advancement, the pressure for news which is exercised upon them day by day, and above all the huge burden of business which law enforcement in the modern city entails, the abuses which have grown up are quite understandable; and we may well wonder that so many prosecutors have avoided them and that so much of the work of prosecution is nevertheless well done. But the obstacles and difficulties referred to produce a vicious circle. They lead to bad practices which lead back to and aggravate the

stimuli of those bad practices. It is idle to deplore those practices while leaving the conditions which give rise to them untreated.

(e) THE "PROFESSIONAL" DEFENDER

In another report, treating specially of bad practices in the enforcement of law, something will be said of the ethics of prosecution and of the forensic methods which have grown up of late. Here, too, a vicious circle results from the difficulties with which prosecutors must contend and the methods by which accused persons are defended. Polls of bar associations in different cities have confirmed what had come to be well known, namely, that most lawyers of standing dislike and avoid practice in the criminal courts. Some give as a reason that it is unremunerative as compared with civil practice, some that it keeps away good clients and injures civil practice, some that it involves association with an undesirable element in the profession and so gives a bad reputation, and some that the procedure is so technical as to require specialization which from an economic standpoint is not worth while. Probably all of these considerations are operative. As a result the criminal courts in our cities are largely without proper assistance from competent and well-educated prosecutors and defenders. Except for a few conspicuous cases of unusual importance, practice in urban criminal courts is chiefly in the hands of a lower stratum of the profession and of politician-lawyers who keep out of court and specialize in "arrangements" and in taking advantage of the opportunities afforded by the series of mitigating devices and the wide powers of the prosecutor's office, to keep their clients from trial.

Three bad results follow from this condition. One is that standards of preparation of prosecution and defense in the general run of criminal cases are on the whole very much below those which prevail in civil litigation, where there are greater economic rewards, and to which, as a specialty, a higher type of practitioner is attracted. Another is that low standards of forensic conduct prevail typically

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in the criminal courts. Wranglings of counsel, ill treatment of witnesses, and sensational strainings for publicity, which impair respect for the courts and interfere with a proper enforcement of law, are chiefly in evidence in criminal trials. A third is the growth of a group of politician legal advisers whose business it is, in large part, to advise lawbreakers how to operate successfully. This has been shown in particular in connection with the national prohibition act. Our attention has been called in several connections to the humiliating spectacle of members of the bar giving advice and counsel to organized conspiracies to defeat the Constitution and laws of the United States. It is not simply a matter of defending accused persons. Everyone is entitled to a fair trial. But in many places it is manifest that lawyers have been advising those who are not accused how to operate with the least risk, have been procuring and trafficking in permits intended for unlawful purposes, and in other ways have been aiding in the violation of the law.

As things were when American legal institutions took shape, there were three checks upon the conduct of lawyers. One was the old apprentice system of training. When a lawyer served a real apprenticeship in an office in a relatively small community, he was well known to his preceptors when he came to the bar and he could be vouched for with assurance. Also those who vouched for him were themselves well known to their fellow lawyers. Conditions of to-day have made the old apprentice system impossible, and this check is gone, with no effective substitute. Secondly, discipline through the courts was effective with a small bar where every lawyer was known to his fellow lawyers and what each did was done chiefly publicly in court. To-day the roll of practitioners in any large city is enormous. The leaders of the profession can know no more than a small fraction of its members and have no means of knowing adequately what they are doing. Judicial discipline is not self-starting or self-operating. The task of invoking it is invidious, and it is only set in motion in grave cases. It does not suffice to reach everyday bad practices which seriously impair the work of criminal justice. The situation has been much

bettered in many places by the action of bar associations and especially of grievance committees. But what these bodies do depends much on zealous individuals in office in them for the time being and is likely to be intermittent. No one is responsible and it is seldom long kept up at a high level of efficiency. In the third place, everyday association in the courts was very effective as a check in the old days when lawyers "went circuit." But modern conditions of judicial administration and facilities for travel have done away with the circuit bar. Moreover the leaders of the profession, who formerly were in court every day, now as a rule appear in the trial courts but rarely and almost never in the criminal courts. Thus the lowest stratum of the bar, practicing habitually in the criminal courts, are without the check which was formerly to be found in the relations of lawyers in and out of court and of lawyers with judges in and out of court. New checks must be developed and a definite centralized responsibility provided.

Bar associations grew up in the latter part of the nineteenth century and have become strong and active in the present century. They have been doing a great deal for better training and better discipline in the profession. But except in a few States they are voluntary organizations and have little or no hold on the habitual practitioners in criminal cases. It must be emphasized that but for a few jurisdictions in which the whole body of practitioners has been incorporated, there is in substance no responsible profession of the law. There are only in each locality of importance so many hundred or so many thousand individual lawyers, each following a money-making calling as he pleases, with little check beyond his own conscience. Members of the bar enjoy the privileges of officers of the court and are responsible agents in the administration of justice. They can not enjoy these privileges and escape the responsibilities. There is a heavy responsibility upon the leaders of the profession and upon bar associations to bring about and maintain adequate standards of admission, of competency, and of conduct. It will not do to say, as has been said so often, that "lawyers are as honest as those in other callings." Much

more than a high average of conventional honesty is demanded of those who are to assist the courts in administering and maintaining justice. Thoroughgoing improvement in the quality and conduct of the habitual practitioners in criminal courts will yield more far-reaching results than any legislative changes in the machinery of prosecutions and the procedure at trials.

II. THE PUBLIC DEFENDER

In the original English practice the accused was allowed counsel in cases of treason or felony only in the argument of questions of law or on collateral issues. For the rest his interests were to be cared for by the trial judge. Full defense by counsel was permitted only in misdemeanors. After the revolution of 1688 counsel was allowed for all purposes in prosecutions for treason, but in prosecutions for felonies a full defense by counsel was not allowed in England until 1836. In America counsel was allowed from an early date and State and Federal Constitutions guarantee to accused in all prosecutions "the assistance of counsel for his defense," in this or some equivalent language. It will be seen from this bit of history that, as indeed the courts have held, the right guaranteed is one of employing counsel, not one of having counsel provided by the Government. But in the spirit of the guaranty most of the States have by legislation authorized or even required the courts to assign counsel for the defense of indigent and unrepresented prisoners. As to capital cases, all the States so provide. Thirty-four States so provide for felonies and 28 for misdemeanors.

Three systems obtain: (1) Assigned unpaid counsel, serving as a matter of public duty only; (2) assigned paid counsel, serving for compensation either provided by general law or fixed by the court; (3) a public defender, i. e., a public officer specially charged with the duty of preparing the defense of indigent prisoners and defending them in court. Except in indictments for murder, the first is the prevailing system. The second obtains in murder cases in 32 States but only in 10 States as to all felonies. The constitutional guaranty is one of counsel; i. e., the trial of the cause, examination and cross-examination of witnesses, and argument of the cause by counsel. But obviously an indigent accused is at a greater or less disadvantage as to the investigation needed to make a defense, especially when the sifting process incident to prosecutions has been carried out loosely and perfunctorily. Hence eight States provide also that expenses incurred by those assigned to defend shall be met by the State. Two of those States, however, limit this allowance for expenses to capital offenses. Public defenders are provided for by statute in six States. In addition there is a voluntary system of providing experienced counsel for indigent prisoners in New York and more recently in some other cities.

It appears that the system of assigned counsel worked very well wherever there was a small bar, the members of which were well known to the court. It appears to work well in many places to-day. But here, as in many other respects, the rise of great urban centers has worked a change. The devolution of much of the responsibility of criminal investigation on the prosecuting attorney's office and the tendency to perfunctory preliminary sifting of cases have undoubtedly increased the disadvantage of accused persons unable to employ counsel.

As things go in the average city, the system of assigning counsel is not efficient and is not economical. The giving out of briefs to represent accused persons unable to employ counsel is called in the English Central Criminal Court by the significant name of "soup." In cities in this country where judges are in politics it comes to be treated as patronage, with the natural bad results. There are notorious abuses in more than one locality, and as a result the system of public defenders has grown up and has strong advocates. Provided for first in Los Angeles in 1913, it was adopted for the State of California in 1921, and has been adopted by statute for large urban areas in Connecticut, Illinois, Minnesota, Nebraska, Tennessee, and Virginia. In California and Nebraska public defenders are elected.[1] In Connecticut, Illinois, Minnesota, and Virginia they are

[1] In Los Angeles County they are appointive under civil service.

appointed by the judges. In 1914 the Bar Association of the City of New York and the New York County Lawyers' Association, through a committee, investigated "the necessity and advisability of creating the office of public defender in New York City." A report was made adverse to a public defender and for a system of defense through private initiative. As a result, a systematic provision for the defense of indigent accused was made through joint action of the bar associations and of the Legal Aid Society. A similar system of voluntary defenders has been growing up and is in operation in a number of important cities.

An able argument for general adoption of the system of public defenders was made before us by Francis Fisher Kane, Esq., of the Philadelphia bar, and we have looked into what has been said and written on the subject and the reports of the work of public defenders and of voluntary defenders so far as they have been published. The principal advantages claimed for the public-defender system come down to four: (1) It is urged that under this system every indigent person charged with crime is represented by an attorney "interested in the welfare of the State as well as of the accused." But it might be asked why, as to the preliminary investigation, it is not the duty of the prosecuting attorney to consider the interests of accused as involved in the interests of the State. (2) It is said that under the system of a public defender cases will be thoroughly investigated before trial. To this, on the other hand, it must be said that they ought to be thoroughly examined before prosecutions are instituted under the prevailing system. If the public defender is expected to do the work of criminal investigation, a further agency is added and responsibility is further diffused. (3) It is argued that attorneys of low standards are eliminated under this system. This, however, is true only as to indigent accused persons. Moreover, such attorneys would be eliminated under the prevailing system were there a proper organization of the bar and well-organized system of assigning counsel. No doubt it is often true, as the proponents of the public defender charge, that many who are appointed to defend do so perfunctorily or even

willfully neglect the cases. But public officers also have been known to fall into perfunctory routine and public duties are at times neglected. (4) The advantage which seems best established is that in large cities, as compared with assigned paid counsel, the system of public defenders involves economy.

Much of the call for a public defender arises from insufficient performance of the duty of criminal investigation and preliminary sifting of cases which has devolved on prosecuting attorneys. If this work were done systematically, intelligently, and impartially, it should be enough to make a proper provision for counsel for the poor when brought to trial. Much arises from abuses growing out of the hampering of prosecutions already considered. Elimination of these abuses by striking at their causes would do away with much of what has been urged as requiring a public defender. It should be said also that the arguments for that system commonly presuppose an ideal public defender. In all such cases better men are to be had at first and before the novelty wears off. In the long run there is little reason to suppose that these officials will be above the average of officeholders. An elected public defender could easily be in politics. He could seek publicity at the expense of efficiency in sensational cases and fall into a perfunctory routine in other cases. He could make perfunctory defense when a man hunt was on and a defender was most needed, and seek to make a record for successful defense, in order to demonstrate the need for his office, in other cases. In other words, his office could easily show the same phenomena as those which have developed in the prosecutor's office. If the criminal bar were made what it should be and the prosecutor's office were properly organized, probably no public defender would be required. But these things may be long in coming, and in the meantime the case of the indigent accused suffers.

On the whole our conclusion is that the prevailing system needs to be much improved; that the system of voluntary defenders has worked well in a number of cities; that the system of a public defender is more adapted to some localities than others and the question of adopting it rather than improving the older system must depend largely on local conditions. We are not prepared to recommend it generally.

III. THE GRAND JURY

Full information with respect to the law and practice of the several States as to prosecution by indictment by a grand jury or by information by the public prosecutor is contained in the commentary to the Model Code of Criminal Procedure put forth by the American Law Institute. The American Law Institute recommends that the requirement of indictment by a grand jury, as the one necessary mode of prosecution for infamous crimes, be done away with. Mr. Bettman makes a like recommendation on the basis of the several surveys of criminal justice which have been made in the past decade. Also the same conclusion was reached by the New York Crime Commission. Indeed as far back as 1825 Bentham asserted that the grand jury had been performing no useful function since the beginning of modern prosecution.

Prosecution of infamous crimes solely by indictment or presentment by a grand jury was provided for almost universally in American constitutions in our formative period. Informations ex officio by the attorney general were the basis of political prosecutions in England in the seventeenth and eighteenth centuries and the odium which attached to those prosecutions was attributed to the mode by which they were instituted. It was supposed that the requirement of indictment was a guarantee against oppressive prosecutions. But the grand jury had its real justification in the system of private prosecutions which never obtained in the United States. Although in historical origin it had another function, it came to be a check on private prosecutions, insuring that privately instituted proceedings should not go forward unless a representative body of men of the neighborhood found there was probable cause therefor. There was no need of such a check in a régime of public prosecutions. Under such a régime the grand jury merely adds one more to the long series of mitigating devices and opportunities for escape in which our prosecuting system abounds. In effect, as things are to-day, there are usually three preliminary examinations: One extralegal, conducted by the

prosecuting attorney, one before a magistrate to bind accused over to the grand jury, and one before the grand jury.

A hundred years ago Connecticut began to prosecute without indictment in case of felonies where the punishment did not extend to death or life imprisonment. Later a general system of prosecution by information was adopted in California. Nineteen States have now wholly done away with the absolute requirement of indictment by a grand jury; three more have done away with that requirement for all felonies where the punishment is less than death or life imprisonment; one more has done away with the need of indictment except for treason and murder; one more has done so in case the punishment does not exceed 10 years; one more if the punishment is less than 5 years' imprisonment; and one more as to prosecutions in special criminal courts. Thus there has been ample experience of the workings of a system of prosecution by information, and there have been several recent studies of that experience in addition to those in the surveys analyzed by Mr. Bettman. From these studies and inquiry addressed to the bar in the States where the grand jury is no longer required, it appears abundantly that prosecution by information has uniformly proved most satisfactory in practice and that none of the bad results feared by those who would retain the old system have been realized.

It is important, in view of the continually increasing demands upon the public purse, that the expense of administering justice be not augmented unnecessarily by inherited institutions which serve no useful purpose. That the grand-jury system is expensive is obvious. But it involves more than expenditure of money. In large cities grand juries must often sit continuously, or almost continuously, throughout the year. If there are to be good juries, excessive drain is made on the time of busy men who can ill afford to devote to public service the time which such a system, appropriate to the rural communities of the past, demands of them. There is economic waste also in requiring witnesses to attend two preliminary hearings, one before a magistrate and one before the grand jury. Moreover, this requirement of

repeated attendance of witnesses, under conditions which obtain in large and busy cities, discourages witnesses and not infrequently leads to no prosecution where one ought to go forward. Again the extra step of indictment by a grand jury contributes to slowing up the already overburdened machinery of prosecution. It offers an additional opportunity of escape where there are now too many, and allows responsibility for failure to prosecute to fall down between the prosecutor and the grand jury. Thus the system wastes money, time, and energy, and diffuses responsibility in a field where responsibility ought to be concentrated.

Protection of the citizen against hasty and unfounded prosecutions, the advantage claimed for the requirement of an indictment in case of all infamous crimes, is more theoretical than real in the urban community of to-day. With the enormous lists of arrests in our large cities there is no guaranty against hasty or oppressive prosecutions in a body which can give but little time to the general run of cases and must depend on the prosecuting attorney for its information as to facts. Under such circumstances it must be a very weak case which can not be presented so as to procure an indictment. Where the number of prosecutions is large, it is hard for the grand jury in any ordinary case to get at other facts than those presented to them, or even to know that it is authorized to get at them. It is unusual for grand juries to go into a thorough, independent investigation of any ordinary case unless the prosecutor is willing. If the work of sifting were done as it should be by proper criminal investigation at the outset and by the prosecuting attorney, the grand jury could be given a basis for doing its work thoroughly and well. But the loose methods of investigation and sifting, which prevail generally in large cities, cause that work to be mechanical and perfunctory, except in a small number of sensational or unusual cases.

It should be added that the requirement of indictment by a grand jury in all prosecutions for infamous crimes involves a number of needless procedural difficulties which do not obtain in a régime of prosecution by information. Thus an indictment can not be amended, while an information may be. There are statutory requirements as to the drawing and composition of grand juries which frequently give rise to dilatory objections to the indictment. There are necessary rules as to the procedure of grand juries, and in particular as to who may be present during their inquiries and deliberations, which likewise offer opportunities for dilatory objections. To-day the grand jury is useful only as a general investigating body for inquiring into the conduct of public officers and in case of large conspiracies. It should be retained as an occasional instrument for such purposes, and the requirement of it as a necessary basis of all prosecutions for infamous crimes should be done away with.

IV. CONCLUSIONS AND RECOMMENDATIONS

Mr. Bettman's report properly emphasizes the importance of individualization in treatment of the offenders, the interrelated nature of all parts of the administration of justice, and the importance of integration of those parts. We call attention again to the statement in his report of major conclusions reached by surveys heretofore made concerning the organization, methods, and basic principles of criminal justice in the light and direction of which reformative steps should be taken, as to which the commission is in substantial accord with the authors of the surveys. Continuous specialized research is required in many major topics in the field for the determination of specific programs.

But certain recommendations, applicable generally to substantially all the States, pointing out the lines to be followed in attempts to better local systems of prosecution, are entirely feasible. There should be:

(1) Elimination, so far as may be possible in our system of government, of political considerations in the selection and appointment of Federal district attorneys and prosecuting officers and of appointments based upon political activity or service.

(2) Better provision for the selection and tenure of prosecutors in the States, and especially for the organization, personnel, tenure, and compensation of the staff of the prosecutor's office.

(3) Such an organization of the legal profession in each State as shall insure competency, character, and discipline among those who are engaged in the criminal courts.

(4) A systematized control of prosecutions in each State under a director of public prosecutions or some equivalent official, with secure tenure and concentrated and defined responsibility.

(5) Provision for legal interrogation of accused persons under suitable safeguards.

Conditions in the several States vary so greatly that it is unwise to go into greater detail. These general recommendations point out goals to be reached by legislation adapted to local institutions and local needs. There is no reason to suppose that within such time as we can foresee a wholly uniform system of investigating, prosecuting, and judicial institutions can be set up in all of the States.

GEORGE W. WICKERSHAM, *Chairman.*
HENRY W. ANDERSON.
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MONTE M. LEMANN. (Concurring in conclusions.)
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APRIL 22, 1931.

CRIMINAL JUSTICE SURVEYS ANALYSIS

BEING AN ANALYSIS
OF THE SURVEYS OF THE ADMINISTRATION
OF CRIMINAL JUSTICE RELATING TO
THE SUBJECTS OF PROSECUTION
AND COURTS

FOR

NATIONAL COMMISSION
ON LAW OBSERVANCE AND ENFORCEMENT

By ALFRED BETTMAN
OF THE CINCINNATI, OHIO, BAR

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CRIMINAL JUSTICE SURVEYS ANALYSIS

SCOPE, METHOD, AND AIM OF THE STUDY

This report has been designed to produce a descriptive, analytic, and interpretative statement of the facts and recommendations concerning the administration of criminal justice set forth and disclosed in the surveys which have been made in this country, beginning with that in Cleveland in 1922, the reports of crime commissions during the same period and other reports which present fact-gathering by methods of a research nature as distinguished from impressions or opinions. This study has been confined to those parts of the administration of justice which are designated prosecution and courts, and therefore has not included statement of the data and conclusions in said surveys and reports concerning police, penal institutions, and functional parts of the administration of justice other than prosecution and courts. However, much of the data contained in the surveys (for purposes of abbreviation the word "surveys" will be used with a meaning covering all of the material examined, whether properly called surveys or reports) on these other subjects bear so closely on prosecution and courts, that they have been read and examined for the material which has such bearing and relevance, and such data and the conclusions deducible therefrom are included.

The particular aim of this report is a concise statement of present conditions in the administration of criminal justice in the United States, as disclosed by the processes or techniques of research which have been applied in various States, cities, or other localities; the statement being presented as a starting point, firstly for inferences, deductions, or indications concerning the general directions of progress and reform and, secondly, for the ascertainment of those

subjects, topics, or fields which have been inadequately covered by existing research or in and about which further data is needed. This report is not intended to be an evaluation or appraisal of the surveys; and when, in the course of the discussion, this or that omission is mentioned or this or that inconsistency pointed out, no criticism or appraisal of the survey is intended, but solely a statement of fact for its bearing upon the analysis of our present knowledge and the conclusions which can be drawn therefrom or for an indication of the subjects which require further research.

No attempt has been made to present all of the relevant data contained in the surveys or the conclusions or recommendations thereon. Naturally each of these surveys contains a great amount of material, facts, conclusions, and recommendations on and concerning details which are of significance and importance to the particular locality, city, or State covered by such survey, but which are not sufficiently typical of the country as a whole or sufficiently relevant or applicable elsewhere to warrant discussion and presentation in this report. For instance, the Illinois survey contains discussions of particular Illinois statutes or procedure which are not so typical of or applicable to other parts of the country as to justify setting an analysis thereof forth in this report. There must, of course, be some selection; and the attempt has been made to select and to present those types of facts, conclusions, and recommendations which are more or less characteristic of or applicable to the administration of justice generally in the United States.

The conditions described in the surveys are, of course, those found at the times at which the observations were made. The extent to which those conditions may have changed for better or for worse could not be known without resurveys. Most of these conditions, however, are traceable to such deep and old causes and require, for removal, such radical remedies and such length of time, that we are safe in assuming that the remedies could not have been accomplished in the short periods since the surveys and that, generally and fundamentally, the conditions described in the

surveys still persist. Besides, the facts developed in any survey of this type furnish bases for a consideration of the problems of American criminal justice, regardless of changes that may occur in the individual city from which such facts were taken.

The surveys all deal with State, as distinguished from Federal, criminal justice, and, as yet, no similar research of Federal administration is available. Occasional reference is made, however, in this report to well-known features of Federal practice, and some Federal statistics, drawn from official sources, have been included.

In regard to the statements of conclusions, recommendations and deductions from the factual data, this report is not limited to those expressly drawn and made in the surveys. Where the surveys contain statements of facts upon and from which I felt deductions could warrantably be made and recommendations logically drawn, I have not hesitated to include such deductions and recommendations, even though they were not apparent, so far as the texts themselves disclose, to those who originally made and reported the surveys, and, in some instances, even though not entirely reconcilable with statements contained in the text of the survey itself. A general attempt will be made to give references to the particular survey and page thereof where the fact, data, conclusion, or recommendation will be found; but no claim is made that such references will be complete, nor will any attempt be made to specify in each instance whether the conclusion or recommendation was expressly made in the survey or has been deduced from the facts disclosed in the survey.

The following is a list of the surveys, reports, etc., examined for the purposes of this report.

Annual reports of Baltimore Criminal Justice Commission, 1923–1929.

Report of the California Crime Commission 1929. Published California State Printing Office, Sacramento, 1929. (Will be referred to as "California.")

The Bail System in Chicago, by Arthur Lawton Beeley, under the auspices of the University of Chicago and the Chicago Community Trust.

Certain special statistical studies and reports, such as the *Statistical Analysis of Criminal Processes in Cincinnati*, by the Cincinnati Bureau of Governmental Research, and others were examined and included in the statistical tables.

The Cleveland Crime Survey. Conducted by the Cleveland Foundation and published by that Foundation in 1922. (Will be referred to as "Cleveland.")

Report on a Minor Survey of the Administration of Criminal Justice in Hartford, New Haven, and Bridgeport, Conn., under the auspices of the American Institute of Criminal Law and Criminology and published in the Journal of that Institute for November, 1926; also other articles or reports on special phases of the administration in Connecticut in the same number of that Journal. (Will be referred to as "Connecticut.")

Crime and the Georgia Courts. Prepared by the Department of Public Welfare, Atlanta, Ga., for the American Journal of Criminal Law and Criminology, June, 1924. Published in the said Journal in the number of August, 1925. (Will be referred to as "Georgia.")

The Illinois Crime Survey—made by the Illinois Association for Criminal Justice in cooperation with the Chicago Crime Commission in 1929. (Will be referred to as "Illinois.")

A Study of Crime in the City of Memphis, Tenn., conducted for the American Institute of Criminal Law and Criminology and published in the Journal of that Institute, August 1928, number.

Report of the Commission of Inquiry into Criminal Procedure, State of Michigan, 1927.

Report of the Minnesota Crime Commission in 1926. Published as the January 1927 number of the Minnesota Law Review. (Will be referred to as "Minnesota.")

The Missouri Crime Survey. Conducted by The Missouri Association for Criminal Justice. Published by the McMillan Co., New York, in 1926. (Will be referred to as "Missouri.")

Report of Crime Commission of the State of New York submitted to the Legislature of that State in 1927. Legislative Document [1927] No. 94. (Will be referred to as "New York, 1927.")

Report of the Crime Commission of the State of New York for the year 1928. Published in Albany in 1928 and known as Legislative Document (1928) No. 23. (Will be referred to as "New York, 1928.")

Report of Crime Commission of the State of New York 1929. (Will be referred to as "New York, 1929.")

Preliminary report of Survey of the Administration of Criminal Justice in Oregon, conducted by the University of Oregon School of Law, prepared for and submitted to the Governor and Legislature of Oregan, January, 1931; Survey Director Wayne L. Morse, associate professor of law, with assistance by Ronald H. Beattie.

Report to the General Assembly of the Commonwealth of Pennsylvania, Meeting in 1929, of the Commission appointed to study the Laws, Procedure, etc., Relating to Crime and Criminals. Published in Philadelphia, January 1, 1929. (Will be referred to as "Pennsylvania.")

Report of Crime Survey Committee of the Law Association of Philadelphia. Published by that Association in 1926. (Will be referred to as "Philadelphia.")

First Annual Report of the Criminal Law Advisory Commission made to the General Assembly of Rhode Island at its January Session 1928. Published Providence, R. I., 1928. (When referred to it will be referred to as "Rhode Island.")

Criminal Justice in Virginia, a survey conducted by the Survey Committee of the Institute for Research in the Social Sciences of the University of Virginia, under the direction of Hugh N. Fuller, Associate Professor of Criminal Procedure, University of Virginia (published by the Century Company) 1931.

There have been examined also the published reports of the judicial councils and attorneys general of the various States. The statistical data for those reports were drawn largely from official reports and not from the original records, and the classifications do not generally fit into those used in the tables included in this analysis. Other types of data were gleaned largely by the questionnaire method, and what might be called research technique was not used to any great extent. Furthermore, the recommendations dealt predominantly with specific pieces of legislation to meet specific evils called to the attention of the councils or the attorneys general, as distinguished from an examination of the administration of criminal justice as an entirety with the view of discovering and pointing out the broader roads of progress. For these reasons, the factual data presented in those reports have not been expressly repeated in this surveys analysis. The examination of those reports did disclose considerable corroboration of the analyses, conclusions, and recommendations of this report, and occasionally an apt quotation has been included.

A number of other publications have been examined, as, for instance: 1930 Report of the Crime Commission of Michigan, 1930 Report of Montana State Crime Commission, the Code of Criminal Procedure prepared by the

American Law Institute, the several reports of the (unofficial) National Crime Commission, etc.

Perhaps a few words concerning the auspices and authors of the surveys from which the statistics, extracts, and observations in this report have been predominantly taken would be useful.

The Cleveland survey was sponsored by the Cleveland Foundation, a well-known community trust. The general direction was in the hands of Roscoe Pound, dean of the Harvard Law School and a leading scholar in the field of the administration of criminal justice. The more immediate direction was by Felix Frankfurter, professor in the Harvard Law School, a leader in the research approach to the problems of the administration of criminal justice. The statistics were gathered, analyzed, and set-up by C. E. Gehlke, professor of sociology, Western Reserve University of Cleveland. This was a pioneer piece of work in this field, and out of this grew the technique and methodology of statistics of the administration of criminal justice which were availed of in the later surveys and which are producing a science of statistics of this nature, and Professor Gehlke became a leader in this field. The study on prosecution was made by Alfred Bettman, who is the author of this report. The study on courts was made by Reginald Heber Smith, well known by virtue of his work on "Law and the Poor," assisted by Herbert B. Ehrmann of the Boston bar. Raymond Moley, who was at that time executive director of the Cleveland Foundation, acted as the managing executive of the details of the work.

The Missouri survey was sponsored by the Missouri Association for Criminal Justice, which was organized for that survey. The director was Arthur V. Lashly, who had been prosecuting attorney of St. Louis County and had had considerable active practice in the field of criminal law. The assistant director was A. F. Kuhlmann, professor of sociology at the University of Missouri, and who has since, under the auspices of the social science research council, prepared a comprehensive bibliography on criminal justice. He was also the author of the chapters of the survey dealing with pardons, parole, and commutations. The statistics were

under the charge of Professor Gehlke, who wrote the chapter on the subject, and no doubt the Missouri statistics represent an advance on those of Cleveland, an advance made possible by Professor Gehlke's Cleveland experience. The report on prosecution was made by Mr. Lashly. The report on courts was made by him and Judge J. H. Grimm, a prominent St. Louis attorney who has been on the bench. The chapter on criminal procedure was the work largely of Herbert S. Hadley, then chancellor of Washington University of St. Louis, who had been a prosecuting attorney, attorney general of Missouri, and the governor of that State, and also by Jesse W. Barrett, who was then the attorney general of Missouri. Mr. Moley had become a member of the faculty of the Department of Public Law of Columbia University, and he was the consultant and editor of the Missouri survey. William C. Jamison was the managing secretary of this survey.

The Illinois survey was sponsored by the Illinois Association for Criminal Justice. Mr. Lashly was its director; Mr. Jamison its assistant director and Mr. Moley its consultant. Professor Gehlke was the statistician. The chapter on The Supreme Court in Felony Cases was written by Albert J. Harno, dean of the College of Law of the University of Illinois. The chapter on The Prosecution in Felony Cases (Chicago) was written by John J. Healy, who had been formerly State attorney of Cook County. The report on the municipal court of Chicago was made by Mr. Moley. The report on the probation and parole system was made by Dean Harno, Judge Andrew A. Bruce of the faculty of the Law School of Northwestern University and Prof. E. W. Burgess of the Department of Sociology of the University of Chicago. The report on the deranged and defective delinquent was made by Dr. Ludvig Hektoen, chairman of the medical division of the National Research Council, Dr. Herman W. Adler, State criminologist of Illinois, and Dr. H. Douglas Singer, prominent alienist of Chicago. The report on organized crime in Chicago was made by John Landesco, research director of the American Institute of Criminal Law and Criminology.

The New York reports were made under the auspices of the State of New York in pursuance of legislation enacted by the State legislature in 1926. The commission which made these reports was entitled "The Crime Commission of New York State" and was composed of members of the two houses of the State legislature, under the chairmanship of Caleb H. Baumes. The 1927 statistics had been gathered and set up under the supervision of Professor Gehlke, and the statistics in the two later reports had been gathered by various State and local functionaries under the direction of Mr. Moley. Mr. Moley was research director for the State crime commission.

The Minnesota report was made by an official crime commission, created and appointed by the governor of the State in 1926. Its chairman was Judge Oscar Hallam of St. Paul, one of the leading lawyers of the State and prominent in matters relating to the administration of criminal justice. During part of the time its executive secretary was Justin Miller, then professor of law at the University of Minnesota and since then dean of the Law School of Southern California and now dean of the Law School of Duke University, North Carolina. For the remainder of the time the director was Wilbur H. Cheny, professor of law in the University of Minnesota. The statistics were gathered and set up under the direction of Mr. H. V. Plunkett.

The Georgia study was made by the Department of Public Welfare of the State of Georgia, the detail work being done by two members of the staff of that department. The consultants were Mr. James B. Reynolds, former president of the American Institute of Criminal Law and Criminology, and E. Marvin Underwood, a leading lawyer of Atlanta. The executive secretary was Rhoda Kaufman.

THE MORTALITY STATISTICS

Tables I, II, III, and IV present statistics of the "mortality" of felony cases. These have been drawn from the surveys and reduced, so far as possible, to a common classification. "Felony" does not receive the same definition in every State, but there is more than a family likeness and,

in general, a felony is a crime deemed of sufficient gravity to permit of sentence to a State penal institution.

The name "mortality table" was first devised and applied in the report on prosecution in the Cleveland survey. The purpose is to set up the statistics in such a way as to give a picture of the number and percentages of cases which fall away or die, so to speak, at the various stages of the prosecution and trials, and thereby throw some light upon the relative responsibility of the various organs of the administration for the dispositions of cases as actually made.

The data upon which the tables have been based were taken from the various surveys. In order to present the material in comparable form and in accordance with a fairly uniform classification, it has been necessary in a measure to reclassify the data and, in a few cases, to calculate from percentage tables the actual number of cases falling within given groups where the latter figures were not available. Consequently the statistics set up in these tables are not simply copies of or a collection of copies of the figures in the surveys, and the particular figures contained in the statistics set up in this report can not always be found in the original survey report. Of course, in different jurisdictions there are variations in practice and in nomenclature. For instance, in one jurisdiction the nolle may be predominantly used for a dismissal by the prosecutor, even though he be required to obtain the authorization of the court, whereas in another jurisdiction the prevailing practice may be for the prosecutor to proceed by motion to dismiss. In seeking a common or comparable classification which will lend itself to some degree of credible analysis as to the responsibilities for the dispositions of the cases or the indications of the places or stages of the administration which need special investigation, there arise such questions as whether dismissal by the court on motion of the prosecutor should be classified as a disposition by the court rather than by the prosecutor. In reclassifying, therefore, there has to be a certain degree of independent determination of debatable questions in twilight zones. All in all, however, the reclassification problems did not

present such difficulties or involve so many cases as to affect the acceptability of the reclassification as it has been made and embodied in the tables. Table V is an outline indicating the types or designations of dispositions which were included in the respective classifications in Tables I, II, III, and IV. The tables were prepared for this report by the Ohio Institute of Columbus, Ohio.

Certain statistics of this nature, other than those contained in the published surveys, have become available and are included. Table VI represents mortality statistics for St. Louis in the years 1925–26, being years subsequent to the Missouri survey, compiled by Mr. W. C. Jamison and published under the title "Criminal Cases in the Courts of St. Louis." Indeed, Mr. Jamison's tables lend themselves to the classification adopted in this report in more complete detail than do the statistics included in the original survey.

The clerk of the municipal court of Milwaukee issued statistics of results of felony cases in that court in the years 1919 to 1928, which have been set up as Table VII in this report.

In the course of its work the Minnesota Crime Commission gathered, from certain representative urban and rural counties in that State, statistics which were never published by it nor included in any published report. The counties covered include those in which the cities of St. Paul and Minneapolis are located. These data have been set up in the appended Table VIII.

The Virginia survey's statistics can not be quite fitted into the consolidated tables (Tables I, II, etc.). They have been set up in tabular form with similar classifications in appended Table IX.

There lurks always the danger that statistics of this nature will be overinterpreted, by which is meant that conclusions will be drawn therefrom beyond what would be justified by valid processes of reasoning and logic. For instance, if the drop from the number of arrests to the number of convictions be great—that is, if the percentage of convictions to arrests be low—there is apt to be a tendency to conclude, without reservations, that the administration of justice produces results unjust to the public and that offenders are escaping convictions to an inordinate degree. As, however, the theory of the law is that an innocent man should not be convicted, and as arrests may be freely made without any judicial determination of probability of guilt, a large percentage without convictions is as compatible with the conclusion that an excessive number of innocent persons were arrested as with the conclusion that an excessive number of guilty persons escaped punishment. These mass statistics, in and of themselves, should be very conservatively and skeptically interpreted. They do, however, legitimately lend themselves to tentative or working hypotheses, and they do indicate the parts or branches of the administration of which closer and more detailed examination will throw light upon the efficiency of the administration as a whole. Some of the general conclusions deducible from these statistics, and the indications as to where to look for the weak spots, will now be briefly pointed out.

One thing that will strike the observer in looking at these tables, is the large number of different steps or stages into which a prosecution is or may be divided, and the large number of ways by which a prosecution may be terminated. In fact, the number is greater than appears, for some of the classifications contained in the tables, such as "eliminated on responsibility of prosecution" or "dismissed by trial judge" constitute combinations of several types of disposition which were divided and segregated in the original surveys. Even after this combination and consequent reduction of classifications, the large number of different steps or stages of and modes of terminating a prosecution strikes the observer, and raises the question, Why so many steps, why so complicated a system?

A study of the figures discloses the disquieting fact of an enormous drop between the number of prosecutions instituted and the number resulting in conviction of the accused. To illustrate from Tables I and II: In New York City in 1926, out of 8,144 felony cases entering the court of preliminary hearing, 3,065 resulted in convictions of some offense,

felony or misdemeanor, but only 881 resulted in conviction for felony, of which 330 resulted in conviction of the offense charged. Expressed in percentages, 37.7 per cent of the cases resulted in convictions of some sort, but only 4 per cent resulted in conviction for the offense charged. Of 13,117 felony cases instituted in Chicago and Cook County in 1926, convictions of any type were secured in only 19.8 per cent and for the offense originally charged in only 4.9 per cent. The figures for Cincinnati show that in 1,445 cases 744 convictions of felonies and misdemeanors or 51.6 per cent were secured, of which 247 were for the offense charged or 17.2 per cent. Presumably, or at least theoretically, the institution of a prosecution has been preceded by some sort of investigation by the police or presecuting officials.

Surely something is wrong with an administration which, for every 100 prosecutions which it begins, obtains a conviction for the offense charged in only 4 or 5, as in New York or Chicago, or even in 17 as in Cincinnati. Whether the inefficiency resides in the institution of too many prosecutions or in too many erroneous charges or in the failure to obtain convictions where the facts justify convictions, or in some of each of these, and where the fault, whatever it may be, lies, whether in police or prosecutor or court or all or none of them, is not, of course, definitely answered by these mass statistics. The drop from the original number of prosecutions to the number of convictions of the offense charged can not be dogmatically interpreted; but it clearly justifies the conclusion that the system as a whole is not an efficient one.

There are those who contend that from statistics such as these, with their numerous successive and large descents from arrests to convictions, the inference of efficiency rather than of inefficiency may be drawn. The conception which is behind this contention is that the police should arrest most freely in order to place into the mill all possible cases, the weakest as well as the strong cases, trusting to later stages of the process to sift out the innocent and thereby do justice; that the court of preliminary examination should likewise be extremely free and liberal about

keeping in the process those against whom suspicion could be asserted, trusting that the later agencies will do the careful sifting and do justice to the innocent; that, similarly, the grand jury should not take a chance on freeing any possible guilty person but pass the responsibility on to the prosecuting attorney or trial jury; and that thereby at the start all possible guilty persons are rounded up and in the end justice is done by the release of the innocent. This is a fallacious conception. It assumes the necessity for an extremely wasteful system, one requiring a much larger and more complex machinery than could administer those cases in which prosecution is justified. It assumes that police departments can not be made efficient. It assumes a necessity for doing injustice to those who, though ultimately freed, are required to contest cases through police departments, courts of preliminary examination, and trial courts. An assumption that carelessness and poor work at any stage of a successive process can have productive value would seem to be fallacious on its face.

Of course the figures vary considerably from city to city and place to place. The above described statistical conditions apply generally to the places covered by the surveys, the notable exception being Milwaukee, and, to some extent, Baltimore. The Milwaukee statistics were included in the Illinois survey. In Milwaukee, out of 1,838 prosecutions, 1,169 resulted in convictions, of which 1,117 (or 60.7 per cent) were convictions for the offense charged. This indicates that there must be something in the statutory system or the working methods or other factors in Milwaukee which produces this statistical indication of a higher efficiency. Perhaps a somewhat more intensive survey of the administration of criminal justice in Milwaukee would produce lessons applicable elsewhere. In Baltimore in 1928, out of 2,248 prosecutions, 1,311 resulted in convictions, 1,200 of which were in the trial court; but the available data does not disclose how many of these were for the offense originally charged.

A close examination of the figures in these mortality tables raises some interesting questions about and points toward

the possibility of some conclusions concerning the interrelationships between the various parts of the administration of criminal cases and their reflex effects upon each other. In most of the States, all or a large part of the prosecutions first go through what is known as a preliminary hearing or examination in a court called police court or municipal court or justice of the peace, in which some of the cases are dismissed or dropped by one form of procedure or another. In most of the States the cases which survive this preliminary examination are subjected to a hearing by the grand jury, in which some of them are dismissed or dropped by a procedure known as "no true bill" or the like. Thus these cases go through two preliminary tribunals and preliminary hearings or trials before reaching, if they do reach, the trial court; that is, the court which is finally to try the question of innocence or guilt. Naturally we would expect that the degree of thoroughness with which the first of these preliminary hearings is conducted, that is, with which it sifts out the cases unworthy of further attention from those worthy of continuation, would affect the number or percentages of cases which survive the grand jury stage, which is simply a second form or method of preliminary inquiry into the justifiability of the prosecution. To a considerable extent these statistics support this surmise and indicate that the larger the percentage of cases which die away in one mode or another in the preliminary examination, the smaller will be the percentage no-billed by the grand jury. For instance, we find in New York in 1925, 58 per cent eliminated in the preliminary hearing and 12.5 per cent by the grand jury; whereas in Cleveland, where the preliminary hearing eliminated but 26.2 per cent, the grand jury eliminated 15.9 per cent. In four Pennsylvania cities, the preliminary hearing eliminated 74.4 per cent and the grand jury 3 per cent. These interrelations have to be accepted or interpreted with a good many reservations; but there can be no doubt that an interrelationship exists, and that each stage of the prosecution has reflex effects upon the stages which both precede and succeed it.

Certainly a high percentage of eliminations in successive pretrial-court stages, followed by a considerable percentage of dismissals without trial in the trial-court stage (nolles, etc.), may be interpreted as an indication of some inefficiency in the system as a whole; for weak cases should usually not require two or more sifting processes. A condition of high percentages of such eliminations in each of two or more successive stages does seem to exist to a considerable extent, when we note the statistics of eliminations in the pretrial-court stages and in the trial-court stage. For instance in Chicago, although about 48.5 per cent of the cases are eliminated in the preliminary hearing and 11.4 per cent in the grand jury stage, yet 14.3 per cent are dismissed for one reason or another and without trial in the trial court. These percentages for eliminations include cases in which the court of preliminary examination accepted a plea of misdemeanor. In Cleveland, the figures are 26.2, 15.9, and 15.7 per cent; New York City 58, 12.5, and 4.6 per cent.

If acquittals were to be included, these percentages of eliminations in the trial-court stage would be materially increased. The above percentages are all based on the number of cases which entered the courts of preliminary examination. For instance, the percentage of eliminations in the grand-jury stage is based on the original number of cases in the preliminary court and not on the number which survived that court and entered the grand-jury stage; and were the percentage in each stage to be based on the number of cases in that stage, the results would be even more striking; as, for instance, Chicago 56.5 per cent eliminated in preliminary examination stage, 22.1 per cent in grand-jury stage, 37.1 per cent in trial-court stage even exclusive of acquittals; the corresponding figures for New York City, 1925, being 58, 29.8, and 16.2 per cent and for Cleveland 26.2, 21.5, and 27.4 per cent. (Cases left pending have not been counted in these percentages.)

The Missouri survey contains some interesting illustrations of the interrelations or reflex interactions between different parts or stages of the administration. On page 150 there is a table showing the relationship between pleas

of guilt and commutations and parole, indicating that the heavier the sentence the freer the grant of parole and the lighter the sentence the more strict the parole; thus showing parole to have developed as a means of lightening or aggravating sentences which were deemed inadequate or excessive at the beginning. A similar interrelationship is illustrated on page 512 of that survey. A particular judge had a habit of imposing severe sentences, whereupon the parole board acquired the habit of reducing his sentences by means of parole.

The relative efficiency of Milwaukee's administration indicated in the mortality tables may and probably does reflect this principle or law of interrelationships and the reflex effects of the system upon each of the parts as well as each of the parts on the system. In that city there is no grand-jury stage, a very conservative use of nolles and a large percentage of trials by the court without a jury; and the statistics show an unusually low percentage of eliminations in preliminary examination and an exceptionally high percentage of pleas of guilt of the offense as originally charged. These are surely more than coincidences; though one must be careful, without more data than these mass statistics, about drawing definite conclusions.

One question that naturally arises is what, if anything, these statistics indicate concerning the relative efficiency of the administration of criminal justice in the large cities and metropolitan communities, on the one hand, and the smaller places or rural counties, on the other. Some of the inefficiencies in American administration of criminal justice are attributed to the fact that a system devised for rural conditions has had industrial and metropolitan conditions thrown upon its machinery. For the purposes of this comparison, the results of the cases in the trial courts, rather than in both preliminary and trial courts, will be used, as the statistics do not offer adequate basis for including the preliminary examination in this comparison. The drop in New York City in 1926 from prosecutions instituted to convictions obtained in the trial court is from 100 per cent

to 21.6 per cent, and from 100 per cent to 4 per cent of convictions for the offense originally charged. The corresponding figures for New York rural counties are 100 per cent to 49.1 per cent and 100 per cent to 38.3 per cent. In so far as this drop is an indication of inefficiency, the system shows better results in the New York rural counties than in New York's great metropolitan center. A similar contrast, although not quite so sharp, is indicated by the figures, respectively, for Chicago and two rural Illinois counties, Chicago's drop being to 19.7 per cent convictions in all cases and 4.9 per cent convictions for offenses originally charged, whereas in the rural counties corresponding figures are 36.3 per cent and 33.3 per cent. The Missouri figures, however, do not present these same contrasts between urban and rural results; for St. Louis shows a somewhat greater percentage of convictions than the Missouri rural counties, though the same is not true of Kansas City and St. Joseph.

These mass mortality statistics include, except where otherwise noted, all felony cases of every kind and degree. The interest and attention of the American people, however, are focused most upon certain types of crime as to which there is a popular impression that the administration of justice is exceptionally inefficient. These are homicide (the most spectacular and humanly interesting of crimes), and also those types of crime in which there is the combination of the theft motive and the use of violence, namely, robbery and burglary. The question quite legitimately arises as to the extent to which the percentages shown by the mass statistics for all felonies hold true for these special classes of felonies—homicide, robbery, and burglary. Is the administration of criminal justice more or less efficient in dealing with those crimes which are more highly organized and in which the major habitual criminal more commonly engages, than in dealing with other types of crimes? For the purpose of seeking an answer to this question, the statistics for these special types of crime were segregated from the others and set up in Tables X, XI, and XII. Illustrative of the results are:

In New York City, 21 per cent of all felony cases entering the courts resulted in convictions in the trial court, as compared with 6.9 per cent of homicide cases, 32.8 per cent of robbery cases and 41.3 per cent of burglary cases. Including cases finally disposed of in the court of preliminary examination by reducing the charge from a felony to a misdemeanor, 58 per cent of all felonies were eliminated in the preliminary examination, whereas 64.4 per cent of homicide cases, 47.2 per cent of robbery cases and 40.6 per cent of burglary were thus eliminated.

In Chicago the corresponding figures were: Convictions in trial court, 19.7 per cent of all cases entering the courts; of homicide cases, 15.8 per cent; of robbery cases, 32.1 per cent; of burglary cases, 35.5 per cent. Eliminations in preliminary hearings disposed of 48.5 per cent of all cases; of homicide cases, 47.3 per cent; robbery, 23 per cent; burglary, 30.7 per cent.

Cincinnati: Convictions in trial court, 25.4 per cent; homicide, 36.8 per cent; robbery, 39.4 per cent; burglary, 57.2 per cent. Eliminations in the preliminary hearing disposed of 54.6 per cent of the whole group of felony cases; of homicide cases, 32.9 per cent; of robbery, 28.7 per cent; of burglary cases, 23.5 per cent.

Keeping always in mind the caution that mass statistics are not to be interpreted as absolute proof of definite conclusions but rather as indications, we may say that, with the exception of homicide cases in some of the cities, convictions seem to be obtained to a greater degree in these special types of crimes, homicide, burglary, and robbery, than in felonies generally. Consequently, if there be a popular impression that these are the types of cases in which the administration is weakest, that impression is not borne out by the statistical results.

One of the useful services which can be rendered by mass statistics of this nature is to indicate the parts, stages, or organs of the administration in which or through which the various dispositions occur, thus indicating where search might well begin or center in tracing the causes of the various dispositions of the cases and in locating responsibilities. It would be much too simple and lead to serious fallacies if the analysis of such statistics were to proceed upon the assumption that, when a disposition occurs at a particular stage, the officials in charge of that stage bear the full responsibility, the full credit or blame as the case may be. Dismissal in the trial-court stage, for instance, might be the result of factors in the police or police-court stage over which the prosecuting attorney or trial court had absolutely no control. In order, however, to make progress in the locating of the causes of the results, it is necessary to have before us, in terms of percentages, the relative parts played by the different stages or organs of the administration, and this information has been set up in Tables XIII, XIV, XV, and XVI.

The jury trial is the stage of the prosecution which is the most dramatic, has the greatest news value and therefore attracts the most popular interest and attention. Naturally the hardest fought and the most difficult cases result in acquittals to a greater degree than other cases. This popular arousal over the hard-fought jury trials, with the consequent popular knowledge of the results of those trials, unquestionably creates a popular impression that a large portion of the cases result in acquittals, or, put in another way, that acquittals by juries constitute the predominant mode or method whereby men accused of crime escape conviction and that the jury trial is the weak spot in the administration. Lawyers are naturally more interested in the problems of jury trial than in the problems of the other stages of the administration, and, in so far as they have devoted attention to reform, that attention has been predominantly upon those aspects or phases of procedure which relate to trials before the jury.

It becomes, therefore, a natural and important question to ask what the statistics indicate as to the part played by jury trials and jury acquittals in the mortality of criminal cases or in the freeing of the accused. The answer will be illustrated by the statistics of New York City, Chicago, Cleveland, Cincinnati, and St. Louis as calculated from Table I. Though the various States, counties, districts, or

localities would, of course, show variations in the percentages, these five cities are sufficiently illustrative, at least of conditions in the larger cities.

Of all felony prosecutions brought by arrest or indictment or information, what percentage are tried by juries; that is, what percentage reach jury trial? Calculating from the tables, we will find in New York City (1925) only 4.7 per cent ever reach jury trial; in Chicago, only 3.8 per cent; in Cleveland, 13.6 per cent; in Cincinnati, 11.8 per cent; and in St. Louis, 13 per cent.

What percentage of the prosecutions resulted in acquittals by juries? We find that in New York this percentage is only 2.6 per cent; Chicago, 2.2 per cent; Cleveland, 5.2 per cent; Cincinnati, 2.8 per cent; and St. Louis, 5.6 per cent.

Of the various forms or modes whereby cases are dismissed, dropped or otherwise eliminated without a conviction or plea of guilt, what percentages do the acquittals by juries represent? We find that in New York the answer is 4.3 per cent; Chicago, 2.7 per cent; Cleveland, 8.5 per cent; Cincinnati, 5.8 per cent; and St. Louis, 12.1 per cent.[1]

Of the cases which reach and are disposed of in the trial court, what percentage do jury acquittals account for? We find that in New York City (1926) this percentage is only 9.4 per cent; in Chicago 5.6 per cent; in Cleveland 9.1 per cent; in Cincinnati 8.5 per cent; and in St. Louis 8.3 per cent.[1]

Even in the trial court—that is, in the stage during which the case is in the jurisdiction of the trial court and after it has gone through and survived preliminary hearing and grand jury—the eliminations or dismissals or escapes (or howsoever one wishes to designate the result) through jury acquittals are generally less than through other modes. The percentage of all eliminations in the trial court or trial-court stage represented by jury acquittals are: New York City (1925) 36.7 per cent; Chicago, 11.5 per cent; Cleveland, 24.8 per cent; Cincinnati, 38 per cent; and St. Louis, 27.3 per cent;[2] showing that even after the cases

[1] Pending cases are excluded in these calculations.
[2] Pending cases are, in these figures, not treated as eliminated.

reach the trial-court stage, substantially more are dropped, nolled, dismissed, or otherwise disposed of, without conviction or plea of guilt, by means of processes other than acquittals than by means of acquittals.

Evidently the popular impression is erroneous, and the lawyers have not been casting their eyes and thought upon those parts or processes in which or by means of which the larger percentage of dismissals occur. We see that in reality the jury trial plays a relatively minor direct part in the disposition of offenders or in the results of criminal cases. Assuming that the large drop between prosecutions instituted and convictions obtained indicates inefficiency, then, as compared with dispositions in the preliminary hearing stage, in the grand-jury stage and by prosecuting officials or courts without trial, this inefficiency is attributable to the jury or to trial processes to a very much less extent than to other parts, stages, or processes. The statistics point to the conclusion that, in the attention given to the jury trial and to questions of trial procedure, there has been and still is a mistaken emphasis.

Granting the fallacy of the popular impression regarding the relative part played by jury trials, and granting a misplacement of professional emphasis, there still, of course, remains the fact that the jury trial is an important part of the administration of criminal justice, and there still arises the question whether the statistics indicate that this part may represent the location of some of the factors or elements of inefficiency; and, in this connection, there naturally arises the question as to the percentage of jury trials—that is, cases tried by jury—which do result in acquittals. The figures as to the percentage of jury-tried cases resulting in acquittals are: New York City, 56 per cent; Chicago, 56.8 per cent; Cincinnati, 23.3 per cent; Cleveland, 38.2 per cent; and St. Louis, 42.8 per cent. These seem rather high percentages, especially considering that most of the cases tried had previously gone through one or two preliminary siftings in the preliminary examination and grand-jury examination, as well as through the initial police sifting.

Whether the inefficiency lies in the trial procedure or in factors with which trial procedure has little or nothing to do, can not be answered from the statistics. Nor can the statistics alone be interpreted to show or necessarily indicate that the jury is incompetent; for the competence of the jury is but one of many factors in the production of the results of trials and any attempt to appraise a jury is inextricably bound up with the problem of the appropriate function of a jury. The statistics do, however, unmistakably show that the trial or trial procedure is not the place or stage which most needs investigation, study, and attention.

We frequently hear the administration of criminal justice in this country compared, to its own discredit, with the English administration. In conversation and press we are told that juries convict in England and acquit in America, and that this is due to the habits or principles of American trial procedure, some of which represent constitutional dictates, others simply procedural methods; and we are often assured that if we would simplify our trial procedure, eliminate therefrom so-called technicalities and reduce the hampering constitutional privileges which surround and protect the accused, we would reach the British quality of administration.

It becomes, therefore, of interest and importance to ascertain the extent to which these impressions or promises are borne out by the statistics, and, for that purpose, Table XVII has been compiled from the volume of British statistics covering the year 1925. In Tables XVIII, XIX, and XX more complete, comprehensive, and detailed English statistics for that year are presented. Judicial organization in England is so different from ours, and the jurisdiction of the courts of preliminary examination vary in so many particulars from that of our courts of the same nature, that, for purposes of the comparison, it is necessary to start with the grand-jury stage and restrict the comparison to the results in those cases which reached or began with the grand-jury stage. For the purposes of the comparison, New York City, Chicago, Cleveland, St. Louis, Cincinnati, and Milwaukee have been chosen. Milwaukee

does not use the grand jury, so that in that city none of the eliminations fall within the "no-billed" classification. The statistics show the following, "convicted" including plea of guilt as well as conviction after trial:

	Per cent	1928 [1]
England		
No-billed	1. 2	1. 0
Nolled, etc., by prosecutor	. 02	. 2 [2]
Miscellaneous disposition other than on conviction or plea of guilt	. 2	. 5
Convicted	82. 0	83. 0
Acquitted	16. 6	15. 3
New York City (1925)		
No-billed	29. 5	
Nolled	1. 9	
Dismissed by court	8. 9	
Miscellaneous	. 9	
Convicted	52. 2	
Acquitted	6. 6	
Chicago		
No-billed	21. 5	
Nolled	25. 5	
Dismissed without trial	. 4	
Miscellaneous	3. 7	
Convicted	40. 0	
Acquitted	8. 9	
Cleveland		
No-billed	21. 7	
Nolled	16. 1	
Dismissed by court	. 5	
Miscellaneous	4. 9	
Convicted	49. 7	
Acquitted	7. 1	
St. Louis		
No-billed	7. 0	
Nolled	9. 5	
Dismissed by court	3. 4	
Miscellaneous	7. 6	
Convicted	64. 8	
Acquitted	7. 7	

[1] The English tables are for the year 1925. Since their preparation, the figures for 1928 have become available and are set forth for purposes of comparison.

[2] Actually there was only 1 case (out of 7,282) that was dismissed by the prosecutor. There were 15 filed for absence of evidence.

Cincinnati	Per cent 1928
No-billed	27. 1
Nolled	4. 8
Miscellaneous	5. 3
Convicted	56. 6
Acquitted	6. 2
Milwaukee	
Nolled	5. 7
Dismissed by court	11. 2
Miscellaneous	1. 4
Convicted	77. 0
Acquitted	4. 7

The striking fact to be noted from these figures is this: That England has a greater percentage of convictions but also a greater percentage of acquittals; and that the great difference lies in the strikingly small number of British cases which are dismissed through no bills, nolles or other forms of dismissal without trial, as compared with the large percentages of nontrial dismissals in our country. The spot in which we differ most strikingly from the British is not the jury trial, for acquittals by juries represent a lesser percentage of dismissals in America than in England. It is the other forms of dismissal, such as the no-billing, nolle, dismissal for want of prosecution, etc., etc., which, to a much greater degree in the United States, account for the high percentages of nonconvictions. Apparently it is not the procedural technicalities in trials nor the constitutional privileges of the accused nor the degree of the judge's control of the trial which constitute the major weaknesses of American administration as compared with that of England, but rather those factors which produce the multiplicity and prevalence of our use of dispositions by courts and prosecutors short of and without trial.

Table XXI enables us to draw some comparisons between the English administration and our Federal administration. Regarding Federal administration there are, as yet, no statistics which have been gathered from original records and by the methods used in the Cleveland, Missouri, Illinois, and other surveys, and consequently, exact comparisons can not be presented. The material in official reports does, however, furnish data adequate for acceptable approximations. The statistics contained in the reports of the Attorney General of the United States do not specify the number of cases presented to the grand jury, and consequently those reports make comparison possible only for cases which begin at the trial-court stage. The statistics of the northern district of Ohio in the year 1927–28 have been selected as the Federal illustration and set up in Table XXI. Compared with State administration, as illustrated by the statistics of most of the cities or counties covered in the mortality tables, the Federal use of the nolle or other form of dismissal without trial is very small, namely: Nolles 0.09 per cent; dismissals by court without trial 4.5 per cent. These Federal statistics show, however, 94.3 per cent convictions, which is considerably greater than the English, and as low as 1.1 per cent of acquittals, startlingly lower than the English percentage. Table XXII is a mortality table for this same Federal district and same year, drawn from the original reports of the United States Commissioners, District Attorney, and United States Clerk to the Attorney General and based on individual defendants rather than on cases and including the grand jury stage. Excluding from the calculation all cases not disposed of during the year, this shows 5.2 per cent no-billed, 6.06 per cent nolled and dismissed without trial, 85.89 per cent convictions, and 2.75 per cent acquittals; again a higher percentage of convictions than in the English tables and a much lower percentage of acquittals. The constitutional privileges and immunities, of which so much is heard as accounting for the disappointing results in our country, govern Federal courts to the same extent as State courts; and the Federal and State codes of trial procedure are substantially similar, the main difference being the freedom with which Federal judges comment on the evidence. Obviously there has been a mistaken emphasis in the attribution to procedural technicalities and constitutional privileges of a major influence in the production of failures to convict. At the very least it is evident that the causative factors or the procedures whereby cases are dismissed without trial and in

which these technicalities and constitutional privileges play no part, or at best an indirect and elusive part, account for many more of these failures than do the verdicts of juries.

How do our jury trials compare in their results with the English—that is, what percentage of cases tried by juries do result in acquittals in England and in the United States? The British statistics, as illustrated by Tables XVII, XVIII, XIX, and XX, lump convictions without separating them into convictions on plea and convictions after trial. Direct inquiry at the Home Office, which has charge of the British criminal statistics, revealed that in 1928 38.8 per cent of those who plead not guilty and were tried were found not guilty, that is, acquitted. The annexed American tables show that, in the group of illustrative cities, the percentage of jury-tried cases resulting in acquittals were New York City (1926), 58.4 per cent; Chicago, 56.8 per cent; Cleveland, 38.2 per cent; St. Louis, 42.8 per cent; Cincinnati, 23.3 per cent; Milwaukee, 42.5 per cent. In Milwaukee, however, most cases are tried by the court without a jury and the percentage of acquittals in all tried cases, with and without jury, was only 13.9. The percentage of acquittals in Federal cases, as illustrated by the northern district of Ohio, was 21.8 per cent, according to Table XXI and 22.7 according to Table XXII. While, therefore, the percentage of tried cases resulting in acquittals is in many American cities somewhat higher than in England, the difference is not as great as popularly supposed, and the results in some American cities are more favorable than in England, and in Federal cases American juries convict in a much greater proportion of cases than in England. All in all, the statistics fail to support the general impression that American juries or American trial procedure account for the difference in the quality of English and American criminal justice.

One of the modes of disposition without trial is that of plea of guilt. A high percentage of pleas of guilt would be an indication of efficiency, as it would indicate that a low percentage of unjustified cases are instituted or that cases are so well prepared by the police and prosecution as to reduce the elements of chance on which the accused would

rely in demanding a trial. When, however, these pleas are not to the offense as charged but to a lesser offense, then this satisfaction can not be drawn; for the high percentage of such pleas is not inconsistent with considerable carelessness in the institution of the cases and may represent careless or inefficient disposition of cases which would result otherwise if given thorough and efficient work. Consequently a high percentage of pleas of lesser offense, particularly misdemeanor pleas, such as the 16.1 per cent of the cases in New York City (1926) disposed of as misdemeanors in the preliminary hearing with 10.1 per cent acceptances of pleas of misdemeanor in the trial-court stage, and, in Chicago, 12.5 per cent of the cases disposed of in the trial court on pleas of lesser offense, indicates the need of closer examination of the causes of such results.

Many of the surveys contain more or less elaborate statistics upon the time intervals between the various stages of the cases, as, for instance, the time interval, in terms of number of days, between arrest and disposition in the court of preliminary examination, arrest and grand jury indictment, arrest and trial, arrest and disposition in the trial court, and the like. Such statistics are exceedingly difficult of trustworthy interpretation. For instance, such statistics usually show that cases in which the time interval is long result in a greater percentage of losses (using losses in the sense of dismissals or acquittals) than cases in which the time interval is short. Whether, however, this relationship in any individual case, or in the mass of the cases, is due to the fact that an originally strong case had become weakened through delay or that a weak case was purposely delayed in the vain hope of strengthening it, or, in other words, which is cause and which effect, can not be answered from such statistics alone. Whether the delay caused the loss or the loss caused the delay, can not, with any degree of assurance, be determined from these statistics. That efficiency and promptness are apt to go together is illustrated by the Milwaukee tables, which show short time intervals and a high percentage of convictions. No doubt chronically long intervals between the stages of cases

reflect some defects or inefficiencies in the administration, and indicate the need of some reforms whose effect would be the reduction of the delays. That is about as much as one can extract from these delay statistics. There are no doubt many features of criminal cases on which an inadequate amount of time is usually expended, as, for instance, on inquiry in the police court as to the previous career of and social facts concerning the accused. The long time intervals shown in the tables should not be interpreted as signifying that the cases had received an adequate amount of the time of the courts, prosecutors, and other officials. As the time element is so important, these delay statistics do form an important item in the surveys, and they have been summarized and incorporated in this report in Tables XXIII to XXVII.

The tables heretofore discussed deal almost entirely with felony cases. The administration of justice in misdemeanor cases has, however, very important bearings upon the administration of criminal justice as a whole, and, from the point of view of effects upon the quality of health, order, safety, and decency in the community, the misdemeanor side is probably the more vital of the two. The surveys are deficient in the degree of attention given to data or descriptive matter or discussions of the administration of misdemeanor cases. The Cleveland report has misdemeanor mortality tables which are appended as Tables XXVIII and XXIX. The Cincinnati Bureau of Governmental Research made an analysis of 11,180 misdemeanor cases in the 6-month period January 1 to June 30, 1929, which is appended as Table XXX. The number of acquittals was disclosed as 20.6 per cent and of dismissals without findings as 3.1 per cent, leaving 76.3 per cent found guilty; a percentage which on its face would look quite high enough. The matter which this table discloses as needing investigation is not the percentage of acquittals, but the large percentage of convictions which result in suspensions of sentence or light sentences, such as imposition simply of the costs. Administration which proceeds to find people guilty and then imposes nothing but the costs upon 52 per cent of these and suspends

even the costs in 38.1 per cent of these cases, is manifestly lacking in quality.

The above analyses of the statistics attached to this report illustrate some of the indications which they contain and the use which can be made of them as a guide toward fruitful intensive studies of the workings of the administration of criminal justice and of its various parts.

CASE HISTORIES OF CRIMINAL CAREERS

Another type of data contained in some of the surveys is that of case histories of the criminal careers of individual offenders. Large numbers of such case histories have been ascertained and presented in various special studies and reports dealing particularly with probation, penal institutions, and parole. Sometimes the data includes not merely the bare outline of the court or criminal career of the individual, but also descriptions of his family environment, his mental and moral characteristics, and the like. (See the individual studies of 145 offenders and 251 adolescent offenders in New York 1928, pp. 309 ff. and 437 ff.) The following illustrations, taken from various surveys or reports, are restricted to the bare facts of the court or record career, and will serve as illustrations of this type of factual data and as a basis for interpretation and discussion.

The following is a case history in the Cleveland report (p. 239), an illustrative list of the dispositions made in the case of a certain offender, identified as "No. 10238":

Year	Charge	Disposition or explanation
1911	Robbery	Bench parole.
	Attempted burglary	Discharged in municipal court.
	Violating parole	Turned over to Ohio State Reformatory.
1914	Forgery	No bill.
1915	Burglary and larceny	Plead guilty to petit larceny.
	Suspicious person	Sentence, 30 days.
1916	Assault to rob (2 cases)	Bench parole.
	Assault to rob	No bill.
	Burglary	Not guilty.
	Contempt of court	Discharged.
	Intoxication	Suspended sentence.
	Burglary and larceny	Nolled.
1918	do	Plead guilty to petit larceny.
1919	Suspicious person	Discharged.
1920	Burglary and larceny	Plead guilty to petit larceny.
1921	Suspicious person	Sentenced to $25 fine.

Another from the same page of the Cleveland report, identified as "No. 10,480":

Year	Charge	Disposition or explanation
1910	Assault and battery	Discharged.
	do	Suspended sentence.
	do	Discharged.
	do	Suspended sentence.
	Indecent language	Discharged.
1911	Assault and battery—Violating sidewalk ordinance.	Convicted of assault and battery.
	Assault to kill (fractured victim's skull with iron bar).	Plead guilty to manslaughter. Sentence, 1 year.
	Murder (assault)	Convicted of manslaughter.
1917	Murder (shooting)	Do.

The Missouri report (page 407) contains the following description of an offender who is called Walter:

Walter is a white boy 22 years of age. He says his occupation is "burglar." Walter had been arrested 38 times, according to the police records. He began his criminal career at the age of 13; 22 times he has been brought before the court for robbery, 4 times for highway robbery, 1 for gambling, and 1 for driving a car without the owner's consent, 5 times for disturbing the peace, 3 times for larceny, 1 for destruction of others' property, 1 for fighting and carrying concealed weapons, and 1 on suspicion of murder. The only sentence he has received is the present one of 4 months in the workhouse. There have been 4 fines of from $25 to $50 and the other charges were disposed of by either being dropped without prosecution or being released by the court because of insufficient evidence. He started his career at the age of 13 when he was brought into the juvenile court for petty larceny. Walter's physical examination shows that he is suffering from a disorder of the ductless glands. His mental examination shows that he has a very marked psychopathic personality, a very definite egotistic make-up, is indolent, and shows many character defects. His mental age according to psychological tests is 13 years.

Case of H——— B———:

(NOTE.—This case arose in Boston and is one of the cases being analyzed by the pending Boston survey. Courts designated as "Chelsea" or other names (other than Boston or superior court) are the juvenile or magistrates courts in suburban places around Boston. "Appealed" means that the case was appealed to the superior court, which is the general county court. Dr. William Healy conducts a clinic for juvenile delinquents under the Judge Baker Foundation, to which the Boston juvenile court refers cases for examination.)

Date	Age	Charge	Court	Disposition
Feb. 19, 1915	8	Habitual truancy	None	
Do	8	Stealing newspapers	Boston juvenile	Probation, but no special treatment.
Apr. 24, 1915	8	Continued truancy		Placed under bond.
Apr. 30, 1915	8	Continued truancy and stealing papers.		Committed to State board; appealed.
May 12, 1915	8	do	Superior	Nol-prossed.
Mar. 28, 1917	10	Larceny of milk	Chelsea	Probation; case filed.
Oct. 19, 1917	10	Breaking windows	(?)	$3 costs and probation.
Nov. 9, 1918	11	Running away	Boston juvenile	Case referred to Dr. William Healy, who recommended family's removal from Boston—not carried out. Sentenced to State board; sentence suspended and probation.
Mar. 27, 1919	12	Larceny of bicycle	do	Probation; case filed.
Oct. 27, 1922	15	Larceny of auto	North Brookfield	Industrial school for boys.
Mar. 24, 1924	17	Attempting to steal	Boston juvenile	Nothing done, because seventeenth birthday and jurisdiction of juvenile court terminated on that day.
Apr. 3, 1924	17	Larceny of clothing; larceny of an auto; breaking and entering (burglary).		On probation for 1 year for larceny; bound over for burglary.
May 1, 1924	17		Superior	Found not guilty on burglary charge; probation renewed on larceny.
June 5, 1924	17	Using auto without permission.	Boston municipal	3 months in jail.
Sept. 20, 1924	17	Reckless driving	Waltham	2 months in house of correction; appealed.
Nov. 14, 1924	17	2 auto larcenies	Boston municipal	1 year in house of correction; appealed.
Dec. 10, 1924	17	The above 2 larceny cases on appeal.	Superior	Not guilty on one; other continued.
Dec. 19, 1924	17	Larceny	South Boston	Found not guilty.
Jan. 20, 1925	17	Larceny of auto	Brighton	6 months in house of correction; appealed.
Jan. 22, 1925	17	Reckless driving (on appeal).	Superior	$10 fine.
Do	17	Larceny of auto	do	2 months in house of correction.
Jan. 23, 1925	17	do	Boston municipal	6 months in house of correction; appealed.
Feb. 13, 1925	17	Larceny of auto	Superior	3 months in jail.
Feb. 18, 1925	17	Old larceny case	do	Continued.
July 1, 1925	18			Released from jail.
Sept. 1, 1925	18	Reckless driving; case came up.	Middlesex superior.	2 months in house of correction.
Oct. 14, 1925	18	2 auto larcenies	Boston municipal	Sentenced to 6 months in reformatory; appealed.
Oct. 14, 1925 Dec. —, 1925		Committed about 10 hold-ups on streets of Boston, on 1 of which was charged with—		
Dec. 3, 1925	18	Robbery while armed	Superior	Sent to department of mental diseases for examination—found to be mentally defective; sent indefinitely to institution for defective delinquents.

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Case of J—— X——.

(NOTE.—This case is part of the illustrative material gathered in the course of the pending Boston survey. The following is simply the extracted bare outline of what was undoubtedly only part of the court contacts and terms in institutions of this youth.)

Date	Age	Charge	Court	Disposition
	9	Chronic runaway from home.	----------	Foster home.
	9	----------	----------	Transferred to private sectarian home for boys.
May —, 1914	9	Chronic absence from home.	----------	Returned to same home; ran away repeatedly.
Oct. 28, 1914	9	Truancy	----------	Committed to Walpole, a county truancy institution.
	10	Escaped from Walpole—Truancy.	----------	Committed to Lyman—the State industrial school for boys.
	10	Escaped from Lyman—Truancy.	Boston juvenile	Committed to Suffolk, county truant school at Rainsford.
1914 to July, 1918.	----	----------	----------	Was in Rainsford for 8 months, after which for a period of about 3½ years the record has not been traced.
July —, 1918	13	----------	----------	Committed to Massachusetts Training School for Boys.
Aug. 11, 1919	14	Larceny	Boston juvenile	Committed to Walpole; also referred to Doctor Healy's clinic for examination. Advised against return of boy to his own home and recommended that he be sent to some private family foster home, and returned to clinic for further study.
Aug. —, 1919–Apr. —, 1920.	----	----------	----------	It appears that Doctor Healy's recommendations were not carried out, that in some way the boy was released and returned to his father.
Apr. —, 1920	15	Chronic absence from home; larceny; pulled loaded revolver on police when arrested.	Court of New Bedford.	Committed to Shirley Industrial School for Boys.
Aug. 18, 1920	15	Had escaped from Shirley; 4 separate breaking and entering charges; also attempted shooting.	----do----------	Bound over.
Nov. 8, 1920	16	Tried on above charges	----------	Sentenced to 18 months in house of correction.
Do	16	----------	----------	Transferred to reformatory.[1]
Dec. —, 1924	20	----------	Court of New Bedford.	6 months in house of correction.
Mar. 9, 1925	20	Carrying revolver without permit; robbery.	Court of Fall River.	Bound over.
June 8, 1925	20	Tried on these charges	Superior court	8 to 10 years in State prison.

[1] Released at end of his term and disappeared from Massachusetts records until December, 1924, though indications are that in this period he had record elsewhere.

Case of P —— B ——.

(NOTE.—This is a case included in the material being gathered in the pending Boston survey. Courts designated "Roxbury," "Cambridge," etc., are the juvenile or magistrate's courts of parts of or suburbs of Boston. Superior is a county court of general criminal jurisdiction. Seventeen is the jurisdictional dividing line between juvenile and adult courts. "Filed" means the case is not further proceeded with, but not finally disposed of. "Shirley" is an official industrial school for delinquent boys. "Breaking and entering" is the Massachusetts title of the offense which elsewhere is usually entitled "burglary.")

Date	Age	Charge	Court	Disposition
Mar. 8, 1920	15	Larceny	Roxbury	On probation.
May 13, 1920	15	----do----------	----do----------	Filed.
Jan. 20, 1921	15	Breaking and entering	----do----------	Plead not guilty.
Mar. 5, 1921	16	----do----------	----do----------	Committed to Shirley but appealed.
Mar. 19, 1921	16	Larceny	Boston juvenile	Filed.
Mar. 23, 1921	16	Carrying revolver	----do----------	Do.
Apr. 18, 1921	16	Breaking and entering	----do----------	Committed to Shirley.
Sept. 13, 1921	16	----do----------	Superior	Filed (probably the case which was appealed from the Roxbury court).
May 5, 1922	17	2 cases of breaking and entering and larceny.	Cambridge	Filed; returned to Shirley. (Had evidently been paroled from Shirley and was returned there on the old commitment by the Boston Juvenile Court.)
June 30, 1924	19	Indecent assault	Roxbury	Filed; returned to Shirley. (Evidently again out from Shirley and he being still under 21, was returned on old commitment.)
Oct. 20, 1924	19	Breaking and entering in nighttime.	----do----------	Bound over.
Do	19	Burglar's tools	----do----------	Do.
Nov. 10, 1924	19	----------	Superior	Both charges no-billed by grand jury.
Nov. 14, 1924 Nov. 24, 1924	19	----------	----do----------	Both charges nol-prossed.
Nov. 24, 1924	19	Larceny and receiving stolen auto.	----do----------	Nol-prossed.
Nov. 25, 1924	19	Breaking and entering and larceny.	Brookline	Filed.
Dec. 19, 1924	19	----do----------	Superior	On probation; restitution made and case then filed.
Mar. 27, 1925	20	Using auto without authority.	Roxbury	Jurisdiction declined.
Do	20	Entering in nighttime	----do----------	Bound over.
Do	20	Breaking and entering and larceny from building.	----do----------	Do.
May 15, 1925	20	Breaking and entering	Superior	6 to 15 years in State prison.

Case of J ——— D ———.

(NOTE.—This is a record of a case in Cincinnati, part of the material gathered by the survey there made by the bureau of municipal research and presented by it as a "typical case history." "House of refuge" is the name of the Cincinnati institution for boys. "Juvenile" and "adult" signify simply the jurisdictional ages of the juvenile and adult courts, respectively. The misdemeanor cases were disposed of in the municipal court, which acted as an examining court in all the felony cases. It is noteworthy that only one case (the robbery case) actually came to trial in a court with felony jurisdiction.)

JUVENILE RECORD

Age	Offense	Disposition
9	Truant case	House of refuge.
9	Stealing pool balls	Do.
10	Stealing cigarettes and candy	Do.
11	Breaking in grocery store	Do.
12	Stealing candy	Probation and sent out of town.
12	Breaking locks	

ADULT RECORD

18	Disorderly conduct	Costs suspended.
18	Violating auto law	$25 and costs.
18	----do	Do.
18	Fugitive from justice	Dismissed.
18	Disorderly conduct	Costs suspended.
18	----do	Costs.
18	Loitering	$50 and costs suspended.
18	----do	Costs suspended.
19	Burglary	Ignored in grand jury.
19	Having burglar tools	$100 and costs suspended.
19	Burglary	Case nolled by grand jury.
19	Assault to kill	Dismissed.
20	Disorderly conduct	Do.
20	----do	Do.
20	Destruction of property	Do.
22	Disorderly conduct	Costs suspended.
23	Speeding	$50 and costs.
23	Blowing siren	$25 and costs.
23	Possessing liquor	Dismissed.
24	Disorderly conduct	Costs suspended.
24	Reckless driving	Do.
25	Burglary	Pending.
25	Robbery	15 years in Ohio penitentiary.

These illustrations of the criminal court histories of individuals could be greatly multiplied, but the foregoing are sufficiently typical. These case histories, which have been collected in various connections and as parts of various studies, disclose or point to some very important considerations and conclusions, namely:

Firstly, habitual adult offenders, that is, those who commit crime as a mode of life or with some degree of frequency, as

distinguished from the occasional offender who commits the occasional crime of impulse or passion, normally and usually begin their habits of delinquency or tendencies toward antisocial conduct in childhood, youth, and adolescence. Consequently, if we assume that the prevention or reduction of criminal conduct is the object of society's law enforcement agencies and administration of criminal justice, the juvenile offender is the one upon whom the emphasis of attention needs to be placed, he offering the best opportunity to stem or divert the tendencies toward habitual crime.

Secondly, criminal careers tend to be progressive, moving from offenses of lesser gravity to those of greater gravity. Crime prevention or reduction, therefore, is more likely to be furthered by the success of the administration of justice in the earlier stages of a criminal career than in the later stages. As these crucial earlier stages are so often represented by offenses we call minor or lesser, the efficiency of the administration of justice must be judged by its quality in the general run of the cases rather than its quality in dealing with the more sensational and aggravated crimes.

Thirdly, many of the minor offenses which constitute steps in the progress of a confirmed criminal fall within the jurisdiction of police or other so-called "minor" courts. In almost every instance the offender came into frequent contact with those courts, either for final judgment or for preliminary examination. It is noteworthy in these case histories, how frequently the accused was released by those courts or subjected to small fines or very short imprisonments. From the point of view of crime prevention or crime reduction, those courts have greater opportunities for influencing the later habits of the offender than have the so-called upper courts. Instead of being minor, they may, second only to the juvenile courts, be the most important of all the courts. In this respect, the case histories fill out and corroborate one of the lessons derivable from the mass statistics.

Each of these three considerations will be discussed more fully and with references to other data thereon contained in the surveys. Before proceeding with this discussion,

another phenomenon apparent on the face of these case histories may be pointed out, namely, the relatively small part played by jury acquittals in the careers of the habitual criminals. In this respect the case histories confirm and corroborate the mortality statistics and support the contention, which will be found elaborated in several connections in this report, that the emphasis of attention and reform should be placed on other parts of the administration rather than on trial procedure.

These case histories support and corroborate the mass statistics also in the large part they show played by prosecutors' dispositions (nolles, acceptance of pleas of lesser offense, etc.) in the history of the habitual offender.

CRIME MAINLY A PROBLEM OF CHILDHOOD AND ADOLESCENCE

The New York Crime Commission, in the introductory chapter of its 1928 report (p. 11), says, referring to the intensive studies of life histories of 145 inmates of the State's penal institutions, made by the subcommission on the cause and effect of crime:

> The studies also showed that delinquency begins in childhood, increases during adolescence, continues mounting and reaches its peak during the vigorous and adventurous years of young manhood. Statistics from all parts of the country indicate that this is uniformly characteristic.

In the same volume (p. 315), where the said subcommission summarizes its findings on these individual studies of 145 offenders, one of the findings reads:

> The majority of these men committed to State prisons and to the State reformatory began their delinquent careers as children. They presented behavior problems in school and later became truants.
>
> Experiences with the courts or commitments to public and private schools for delinquent children, jails, workhouses, or reformatories did not deter these offenders from committing other offenses.

This same subcommission made a study of 251 adolescent offenders, and the introductory part of the report on this subject affords a wealth of well-stated, quotable matter on this aspect of the crime problem. For instance, the introduction states (p. 443):

> Crime statistics, however, indicate that this group, most of whom are repeated offenders, begin their careers at comparatively early ages, and commit new offenses of increased severity and with greater frequency, with advancing years. It is this development of criminal careers that constitutes a real crime wave, one which begins in childhood, increases during adolescence, continues mounting during the years of vigorous manhood, and ebbs only as old age approaches.
>
> * * * * *
>
> Of practical importance is the question of how this curve may be modified. Common sense dictates that the solution lies in preventing or curing criminal tendencies among the young.

Part III of the Illinois survey is upon Organized Crime in Chicago, the introduction to which on page 820 contains the following passage:

> The problem of crime is the problem of youth. Every criminal career has its beginning. One of the chief merits of the Survey of Organized Crime lies in the fact that it does not merely portray the operations of the adult desperado and master criminal, but discloses to us the environments and the neighborhood socal philosophies which, when they were mere boys, started these outlaws upon their careers of crime and which frequently have made it possible for them to obtain and to maintain political power and immunity from punishment. * * * If we would control crime in Chicago, we must control the thoughts and the aspirations and the ambitions of youth and the moral and social atmosphere and outlook of the districts and localities where our criminals are trained and nurtured.

The same thought is expressed in the Missouri survey (p. 419):

> It seems clear to us that our most useful and productive work will be with children. The cure of character defects, always difficult, becomes increasingly difficult as age progresses.

There can be no doubt about the unescapable truth of these conclusions. The juvenile offender is the heart of the problem, and the instrumentalities devised by society for dealing with him the most important. In view of this, many of the surveys might be open to some criticism for the relatively small space and time devoted to the juvenile delinquent, to the juvenile courts, and other public agencies dealing with the juvenile offender. This is due to the fact that the

subject-matter, the administration of justice, was not always deemed to include, or was deemed to include in only a minor degree, the public agencies having jurisdiction over the juvenile. But neither any limitation as to the definition of administration of criminal justice, nor the greater dramatic appeal of adult crime, of jury trials and forensic eloquence, should be permitted to divert emphasis from the place where it must be located, if it is to be located intelligently. The people of the country should be made aware of how little, relatively, the perfecting of the machinery and methods of dealing with the adult criminals will accomplish toward crime prevention, if we neglect the creation of forces, agencies, and methods which attack crime at its source in the personalities and environment of the young. The surveys, as aforesaid, contain little on this subject, and what they do contain does not fall within the assigned scope of this report and, consequently, the remainder of this report will be devoted to the administration of criminal justice in relation to the adult offender.

IMPORTANCE OF GENERAL RUN OF CASES

Popular impressions come from the newsiest and most sensational cases rather than from the general run of cases. The atrocious or mysterious murder, and other cases upon which the limelight of publicity beats most fiercely, are those in which the prosecution puts its best foot forward and which it prepares most assiduously and in which, likewise, the defense is best prepared and fought. Consequently, the results in these cases are not necessarily typical of the administration as a whole. Nor are these cases necessarily, from the point of view of crime reduction or crime prevention, the most significant.

This idea was expressed in the report on prosecution, Cleveland, page 160:

> Among possible classifications, the cases in the criminal division of the common pleas court may be divided into those in which public excitement pushes the prosecutor to unusual effort, and those where no extra limelight has been turned on. It is these ordinary cases which best illustrate the administration of criminal justice.

> The success of criminal law enforcement is, moreover, best judged by results in the general run of habitual offenses, and not by its sporadic triumphs in occasional sensational murder cases. The young man who, by reason of mental and moral make-up or environment, has in him the potentialities of a professional or dangerous criminal, does not begin his career with a murder or large-scale robbery. His offense is more likely to be petit larceny, porch-climbing, or small hold-up. If the administration of justice can be effective in discouraging the development of his criminal career, this is the time and the point for it to operate. * * * The general peace and security are more dependent on society's treatment of the regular flow of ordinary crimes than on the results of the few great murder cases which attract public attention and create public excitement.

The same thought occurs here and there among the other surveys, and, even where not explicitly stated, the facts presented demonstrate the truth of these observations. The histories of individual criminal careers, particularly, tend to show that the large scale robbery, burglary, or homicide, except the occasional crime of passion, represents an advanced stage of criminal conduct which began with and proceeded through other crimes of lesser degrees, and that these lesser crimes formed part of the general and comparatively obscure run of cases.

THE IMPORTANCE OF THE "MINOR" CRIMINAL COURTS

In the past the attention of the public, and particularly of the legal profession, has been concentrated upon the trial courts, usually county courts. The importance of what we will for the moment call minor criminal courts, such as the magistrates, police courts, and municipal courts, has not been fully realized by American communities. This, together with the enormous work-load which contemporary urban conditions have thrown upon these courts, have tended to produce a deterioration in the quality of their administration. Some of the surveys have sought to emphasize the tremendous importance of these courts and how anything like efficiency in the administration of criminal justice is impossible unless the part performed or which should be per-

formed by these courts be well done. The Cleveland report on prosecution (p. 87) has this to say on the subject:

In setting down the facts regarding the administration of criminal justice in Cleveland, therefore, the description of the work of the municipal prosecutor and municipal court naturally comes first in order. This order of precedence, however, is justified on deeper and more significant grounds than mere chronological sequence. For, though the public is not always conscious of it, the police court or criminal branch of the municipal court and the officials who conduct its work are the most important of all the tribunals and officials engaged in the administration of justice in any community, especially where, as in Cleveland, the municipal prosecutor has charge of the early stages of State cases. * * *

Moreover, the office of the municipal prosecutor and the municipal court are the points of contact with the administration of justice of the overwhelming majority of the inhabitants who come into any contact with courts or court officials. There the great bulk of the population will receive its impressions regarding the speed, certainty, fairness, and incorruptibility of justice as administered. For law to be effective there must not only be justice, but also the appearance of justice—that is a truism which requires no elaboration. As a deterrent of crime, the municipal court is more important than any other of our institutions, with the possible exception of the police force.

The same idea is expressed in the Cleveland report on courts, page 370:

Assuming that the municipal court is to retain a portion of criminal jurisdiction, then steps should be taken to recognize the fact that it is a court of equal dignity, responsibility, and importance with the court of common pleas. It is not an inferior court, nor does its business consist of petty cases. In its work for the prevention of crime and the inculcation of respect for our institutions, it is the supreme court in importance if not in rank.

Dean Pound in his summary of the Cleveland survey entitled "Criminal Justice and the American City," emphasizes the same point (p. 608):

It is at this point that the great mass of an urban population, whose experience of law is to likely to have been only an experience of arbitrary discretion of police officers and offhand action of magistrates, tempered by political influence, might be taught the spirit of our institutions and made to feel that the law was a living force for securing their interests.

The Cleveland report on Medical Science and Criminal Justice (p. 475) points out:

That the municipal court should constitute a process of weeding out socially incompetent individuals or serious delinquent types not yet guilty of a major crime is not comprehended. In a community in which public opinion on this subject is more advanced the municipal court is regarded as the most important clearing house and sorting station for keeping the stream of civic life pure.

The report of the Baltimore criminal justice commission for the year 1923 on page 17 says:

Too long have the courts for the trial of minor infractions of the law been undignified, unsystematic, politically tainted makeshifts. While denying to such courts the right to try major cases, the community entrusts to them the all-important power of dismissing the charges in such cases. * * * A system that is perhaps well adapted to rural conditions for which it was conceived is still employed in a great city to meet whose needs and conditions it is totally inadequate. * * * Although it is almost invariably true that the serious offender has a long career in the minor courts, we wait until he graduates from such a career into a full-fledged burglar or highwayman before paying serious attention to his conduct.

The Connecticut report (p. 346) stresses the same idea, pointing out that to 97 per cent of the offenders against the law in the city of Hartford, the police court stands for all the law and justice they know.

The Efficiency Commission of Kentucky on the Judiciary of Kentucky, in its report published December 31, 1923, Frankfort, Ky., aptly says:

Nor can it be said that a failure in the prosecution of misdemeanors is negligible, while failure in respect to felonies is serious. Both are serious. There is no sharp division between the two classes, so far as criminals are concerned. The division becomes constantly more artificial. Most persons who commit felonies have previously committed misdemeanors. To think that slack prosecution of misdemeanors is tolerable as long as felonies are well prosecuted is on a par with the belief that little fires are inconsequential or that a few cases of smallpox are negligible. The big fact is that the problem of crime is the problem of the criminal.

The administration of criminal justice in the courts which try minor offenses and have part in the conduct of the cases of major offenses is of outstanding importance. The juris-

diction of such courts, their structural organization and relationship to the other parts of the judicial structure, their administrative and working methods, the caliber of their judges and staffs, the adequacy of their equipment—these are problems of predominant importance, without the wise solution of which no amount of reform in the other parts of the system will remedy the evils which to-day impair the efficiency of our administration of criminal justice. These problems of the so-called minor courts are amongst the most urgent to be realized, studied, and solved. While some of the surveys contain considerable data about present conditions and valuable recommendations for improvement, none of them explores the problem as profoundly or comprehensively as its fundamental importance demands.

THE INSTITUTION OF PROSECUTION OR ISSUANCE OF WARRANTS OF ARRESTS

We will now proceed from these more general observations on the story told by the statistics and by the histories of individual offenders to a more close examination of the different stages in the conduct of criminal cases and of the public organs or instrumentalities which are concerned with them.

The order in which the various topics should be discussed presents many difficulties. One simple solution might be that of chronological order, that is, taking up the subjects in the order of the stages of a criminal case. That would fail to recognize, however, that chronological order does not correspond to either functions or functionaires. For instance, nolles or bargainings for pleas of guilt take place both in the municipal or police court and in the county court, and the discussion of the problem involved in nolles and compromise of criminal cases would have to be broken up, if a chronological order were followed. For instance, again, the problem of the prosecutor's quality of preparation arises both before and after the grand jury stage, and the discussion of it would have to be broken up or repeated if the chronological order were followed.

No order which might be adopted could be completely satisfactory. Every topic bears upon the material under every other topic. Indeed, this essential interrelationship is what creates this problem of the order of discussion. The institution of prosecution has been chosen as the opening topic, followed by the subject of bail. Then are brought together those topics relating predominantly to the prosecuting attorney, his methods, his functions, his problems. Then come those topics relating predominantly to the courts themselves in their trial aspects. Then the two types of jury, grand and petit, which, like the prosecutor and the courts, are amongst the agencies engaged in the administration of criminal justice. The problem of the insanity defense, bearing as it does both on the function of the jury and the disposition of the offender, constitutes a transitional subject to the discussion of the topics dealing with the disposition of the offender and with the courts in their disposing, as distinguished from their trial, aspects.

A preponderant majority of prosecutions begin with the issuance of a warrant of arrest. The issuance of such a warrant constitutes, therefore, a determination to institute a prosecution. As the capacity of the public's equipment to handle its task efficiently is obviously related to the size or volume of the load thrown thereon, an efficient system for determining upon the instituting or beginning of prosecution is obviously a matter of great importance. The statistics in American cities generally, as developed by the surveys, show a disturbing drop between the number of arrests and the number of convictions, and any attempt to trace the sources and causes and factors of that drop should evidently be carried back to the arrest stage. The Missouri survey (p. 123) has some interesting statistics which tend to show that the more mechanical the arrest, that is, the less discretion exercised in the determination of arrest, the greater will be the percentage of cases dropped in the preliminary examination. This is as would be anticipated. In Missouri the warrant must receive the approval of the prosecuting attorney. It appeared that in St. Joseph a warrant was, as a matter of course, issued whenever

applied for by the police, whereas in St. Louis the prosecuting attorney did exercise a certain degree of choice. Over 60 per cent of the St. Joseph cases were discharged or otherwise dismissed in the preliminary examination, while the percentage in St. Louis was about 28.

This is another illustration (and the surveys teem with them) of the integrated nature of the processes of law enforcement and of how the methods and quality of the work of any part affects the nature of the problem of and the effectiveness of every other part.

Despite the obvious importance of the instituting of prosecution as bearing on the work load, none of the surveys undertook an inquiry into the appropriate or advisable procedure and adminstrative methods of warrant issuance. It is true that the Cleveland study on prosecution (pp. 135 ff.) gave a description of the casualness and haphazardness of the methods of the office of prosecuting attorney of the municipal court in approving or rejecting applications for warrants. The Illinois survey (p. 258) recommended that no warrants be issued without the approval of the prosecuting attorney. That is the statutory system in Missouri and, if prosecuting attorney be defined to include the municipal prosecuting attorney, the system in Cleveland. Yet the surveys in those places amply demonstrate that the mere statutory locating of this function in the prosecuting attorney will not necessarily produce efficient administrative methods or a careful sifting out of the cases at that stage. None of the surveys, however, searchingly faced, either in the gathering of fact data or in the discussion, this problem of whose function it should be to determine the instituting of prosecution and what should be the working methods and principles which govern its administration. Should the clerk of a court be the official in whom this function is placed, and using clerical methods, or the prosecuting attorney using methods appropriate to that office, or the magistrate using methods of a judicial nature? What, if any, should be the part of the accused in the procedure? These, and other questions which will occur to the mind, present important problems which must be

studied thoroughly, before we could feel that there exist adequate data on which to base conclusions or recommendations. The pending Boston survey expects to go more deeply than its predecessors into this problem of the procedure and administration of the issuance of warrants and the instituting of prosecutions.

BAIL

Almost every one of the surveys contains discussion of bail. Practically all of them disclose an absurdly small percentage of enforcements of forfeited bail bonds, and there is a family likeness between the statistics and abuses disclosed. The recommendations vary so much from State to State, corresponding to variations in local statutes and practices, that no simple formula or generalization, nationally applicable, can be formulated. The New York 1927 report, page 182, recommends that bail jumping be made a special crime.

An intensive study and report on "The Bail System in Chicago" was made by Arthur Lawton Beeley, now of the University of Utah, and published by the Chicago Community Trust and the University of Chicago Press. This is so much more thorough a study of the bail problem than is contained in any of the surveys, that the liberty has been taken of using it as the basis for this summary on that subject. Its conclusions are undoubtedly applicable to American communities generally, and its data consistent with and corroborative of the data contained in the surveys. Two types of factual data were gathered and analyzed, namely, the records of the Chicago courts relating to the administration of the bail system, and secondly an intensive study of individual inmates of the Chicago jail. The major conclusions derived from the record data were:

(1) Too little use is made of summons and notice, as distinguished from arrest. As the result, about three-fourths of all persons accused of crime in Chicago are first apprehended, then taken to the police station, and later are released on bail or detained in the lock-up pending arraignment in court. The situation is further aggravated by the fact that

a majority of all accused persons are finally discharged, either before or after trial.

(2) Continuances are too frequent and too long, thus reducing the chances of the appearance of the accused who is out on bail, or imposing on the community the cost and on the accused the injustice of excessively long jail confinement.

(3) The amount of bail in each case is determined arbitrarily and in accordance with arbitrary schedules or habits which pay little attention to the personality, the social history or the financial ability of the individual accused, or the integrity and capacity of the sureties. Men who can not afford to give the larger amount of bail often have the character or personality which make them dependable to appear for trial, despite which heavy bail is imposed; whereas others, of a bail jumping nature, are given bail conditions which they can easily fulfill.

(4) Unreliable bondsmen and inadequate sureties are accepted.

(5) The professional bondsman plays too important a rôle in the local administration of criminal justice.

(6) Bail bonds are forfeited with great ease, but the forfeitures are set aside to an excessive degree. In only a comparatively small proportion of forfeited bonds is judgment entered. An absurdly small percentage of the judgments are collected.

A very extensive and intensive study was made of the cases of about 400 unsentenced prisoners in the jails, with a view of ascertaining whether bail was required in cases in which there was no necessity for such requirement and in which the accused could have been reasonably relied upon to appear at the trial. Space does not permit a description of the thoroughness with which this study was made. Data concerning the social history and personal characteristics of each offender were assembled from many sources. Among the interesting conclusions are the following:

In a majority of cases the prisoner, often even with the help of his friends, is too poor to meet the bail imposed upon him.

The unsentenced jail prisoners are not transients taken as a whole; for about 90 per cent of the unsentenced jail population at any one

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In a majority of cases the prisoner, often even with the help of his friends, is too poor to meet the bail imposed upon him.

The unsentenced jail prisoners are not transients taken as a whole; for about 90 per cent of the unsentenced jail population at any one time are persons who at time of arrest have lived in Chicago for one year; almost two-thirds had lived in Chicago for over five years, and about one-third had lived there all their lives; 70 per cent of the prisoners studied had a family in Chicago and at the time of arrest 60 per cent were living either with their families or with relatives.

The assumption that the unsentenced offender is an habitual offender or jailbird proved to be a fallacy. While about 60 per cent had some local record of previous arraignments, only about one-half of them had a local record of previous convictions, and about 25 per cent had previously been sentenced to imprisonment.

The author came to the conclusion, after taking into account all the factors developed by his study, that 28 per cent of the persons studied were needlessly imprisoned while awaiting trial and that their appearance for trial could have been effected in simpler ways, such as reduction in the amount of bail or acceptance of cash bail instead of real-estate security or by the use of a bail without sureties.

Thus the bail system failed to accomplish either of its purposes, the assurance of the presence of the bailed accused at the trial or the release from custody of those whose presence could reasonably be depended upon.

The author then proceeds to point out that in more pioneer and rural days, the court or court's advisors were sufficiently acquainted with the few persons brought into court to know, with a fair degree of accuracy, whether they would be dependable or whether they need be detained or put on bail. With the tremendous mass of cases brought into court in the modern metropolitan community, this personal knowledge is no longer possible, and the attempt to substitute uninformed, casual, and arbitrary decisions has made the bail system the failure that it is. The present conditions constitute another illustration of the effect of applying the machinery and methods of pioneer and rural days to the conditions of contemporary urbanized life. The bail system is therefore simply another illustration of the need of deep changes in the organization and methods and principles of the administration of criminal justice.

Analogously to the changes needed in the methods and principles of sentences and other dispositions, whereby they

will come to be more individualized and based on comprehensive information concerning the offender (a subject which will be dealt with later in this report), so, in the opinion of Professor Beeley, should similar principles and methods of individualization be applied to the detention of persons accused of crime and the terms of bail, and thereby the decision as to the need for bail and the amount and the type of security be based in each case, not on arbitrary schedules or guesswork, but upon information concerning the status, personality, and history of the accused. The courts do not possess, at the present time, the equipment for the gathering, presentation, and interpretation of this type of information; and there remains to be studied and developed the nature of such equipment, its structural relationship to clerks, prosecutors, and courts, and the procedure for presenting and applying such information in the individual case.

QUALITY OF PROSECUTION IN THE MUNICIPAL COURT

Some of the surveys contain descriptions of the casualness, carelessness, and unpreparedness with which the State's case is conducted by the prosecuting attorney in the municipal or police courts. The Cleveland report (pp. 94, 104, 114) contains a description of the negative part played by the prosecuting attorney in the municipal court of Cleveland and how utterly lacking in preparation his conduct of the cases was. A similar picture is given in the Illinois survey (pp. 305 and 406 ff.):

Page 305—

* * * The cases are not well prepared, witnesses are almost never interviewed before their appearance, the assistant State's attorneys who are present appear to have the attitude represented by the remark which we have just quoted. In their opinion it doesn't matter much—"It's only a preliminary hearing."

Page 406 ff.—

* * * The work of the assistant State's attorneys who are assigned to the municipal court is perfunctory and careless in the extreme. * * * The duty which each assistant seems to feel acquits

his responsibility is to fill out a form report which contains the name of each defendant in a felony case, the number of the case, the charge, and the disposition. * * * "an examination of these sheets indicates that some of the assistants scarcely rise above the literacy grade, and added to this are so meager in the information which they record that the report is scarcely usable at all." The assistant State's attorney is usually lounging against the bench engaged in casual conversation with every passer-by, careless, unimposing, undignified and indolent. He permits the judge to put most of the questions. He contributes very little to the process of determining whether a crime has been committed.

The assistant State's attorney gives practically no time to the preparation of cases. The first time he comes in contact with a case is usually when it is called by the clerk. The assistant at this time usually picks up the complaint and attempts to extract testimony from witnesses whom he has not seen before. This, of course, places him at a decided disadvantage and seriously impairs the interests of the State while the defendant is, in all important cases, represented by counsel presumably prepared both as to law and facts. It is thus obvious that the State is poorly served in the preliminary hearing and undoubtedly many cases which might result in the successful prosecution of important criminals are lost at this stage because of faulty work by the representative of the State's attorney's office.

This Illinois picture is identical with that described in Cleveland, and would probably be quite similar to that of many other cities were the surveys of such other cities to include a description of the prosecuting attorney in action in the municipal or police court. The foregoing Illinois quotation relates to preliminary hearings in felony cases. Prosecution in the municipal court, however, also includes cases other than preliminary hearings, such as State and municipal misdemeanor cases, most of which are important by reason of their relation to the development of criminal careers and to the general standards of morals in the community. These misdemeanor cases are particularly important in that court because that court finally tries and disposes of them. As is shown in the Cleveland report, the casualness and unpreparedness of the prosecuting attorney is quite as great in misdemeanor cases. There are, certainly, types of cases which do not require the services of a prosecuting attorney, for instance, types of infractions of regulatory ordinances, such as traffic or smoke abatement, which can ordinarily be conducted by members of the particular

municipal department involved. There may be types of cases which can be efficiently conducted by the police. As we will see later in this report, for the efficient functioning of the municipal court a classification of calendars and dockets is necessary. Similarly a classification of cases is necessary from the point of view of the efficient organization of the prosecution; and the times, places and procedures of the trial of the cases in the court should be dovetailed and adjusted into the classification of cases in the prosecutor's office and in the other organs of prosecution. None of the surveys contains any thorough study of this problem of the classification of cases in the municipal court and the classification in the organization of the prosecution. The Cleveland report on prosecution (p. 200 ff.) does give a few hints concerning this subject. The pending Boston survey expects to go into it more searchingly.

Upon one thing these surveys do agree where they mention the subject, and all must agree with them, that whoever conducts the prosecution, whether the policeman or the building inspector or the prosecuting attorney, should be prepared to conduct it carefully and thoroughly and should conduct it in a careful and thorough manner. As stated in Illinois report, page 258 ff.—

> The responsibility for the bringing out of evidence should not be placed upon the sheriff nor upon the justice in the preliminary hearing. The State's attorney has a definite responsibility for prosecuting cases vigorously and for seeking continuances until witnesses are found, and in every way to raise the standard and quality of the prosecuting function in the minor courts.

In prosecution, that is, in that portion of the administration of criminal justice which falls within the designation "prosecution," as in any other activity, carelessness and casualness will produce low quality results.

In some States, Ohio for instance, the conduct of State cases in the preliminary examination does not fall within the jurisdiction of the State's attorney but is intrusted to the municipal attorney or other local prosecutor. The Cleveland survey (p. 138 ff. and 208 ff.) points out that this produces a breaking-up of the prosecution with disastrous

consequences to its efficiency, and recommends that, in all felony cases at least, the prosecuting attorney's function should be concentrated in one office. The Illinois and Missouri reports demonstrate that this unification, in and of itself alone, will not necessarily do away with careless and unprepared prosecution in the preliminary examination. There can be no serious doubt, however, that the unification of prosecution, as recommended in the Cleveland survey, is an essential item in the program of reform.

ACCEPTANCE OF PLEA OF LESSER OFFENSE—PROSECUTOR'S BARGAINING FOR DISPOSITION

There are a number of types or modes of disposal of cases which do not involve a trial, such as nolles, dismissals on pleadings or for want of prosecution, acceptances of plea of guilt. In some of these the prosecuting attorney has a greater or less degree of participation or responsibility. These types or modes of termination of cases are used in both the municipal and the county courts, and a discussion of them does not belong in subdivisions of this report which deal exclusively with the one or other of these classes of courts. A discussion of them at this point, before reaching the topics which relate to prosecution in the trial court, would seem at least as appropriate a place as any other.

One of the processes by which cases are disposed of without trial is, of course, the plea of guilt. Reference has been made to the startlingly large percentage of cases in which this plea is to an offense of lesser gravity than the original charge, in a very considerable percentage of the cases the reduction being from a felony to a misdemeanor. These pleas to a lesser offense and the acceptance thereof sometimes occur in the court of preliminary examination and sometimes in the general trial court. Though the court has theoretically and by statute the power to refuse to accept such pleas, the court, in actuality, is so dependent for information upon the prosecutor, and the later results of the case, if the plea be refused, are so dependent upon the prosecutor, that the prosecutor, rather than the court, is, under

existing conditions and procedure, the more influential in regard to such pleas.

The Illinois survey, in the chapter on Probation and Parole, pages 470 ff. and 549, contains a convincing attack upon the extent to which the prosecuting attorney bargains with the accused and exchanges a promise of light sentence, probation, or parole for a plea. It states:

> When the plea of guilty is found in records, it is almost certain to have in the background, particularly in Cook County, a session of bargaining with the State's attorney. If the prisoner is charged with a severe crime, which for some reason or other he does not care to fight, he frequently makes overtures to the State's attorney to the effect that he will plead guilty to a lesser crime than the one charged. * * * These approaches, particularly in Cook County, often are made through another person called a fixer. * * * We found many cases in which the plea accepted, and the punishment inflicted, seemed trivial in comparison to the magnitude of the crime committed.

The report goes on to express some of the reasons which produce this abuse. Sometimes the case is weak; the State's attorney is overloaded with work and plea acceptance is a way of disposing of cases rapidly; political influence plays a part; also the desire to make a record of convictions. There is, however, no presentation as to what the authors deem to be correct principles of or advisable procedure for the acceptance of such pleas.

The Missouri survey, page 148 ff., under the title "Bargaining For Pleas of Guilty," also described this same phenomenon. It states the statistics as showing that in the cities a plea of guilt results, as a rule, in a lesser sentence than conviction by jury. The author affirms that most of these pleas represent bargains with the prosecutor. The extent of these practices in the cities is attributed partly to the immense volume of cases thrown upon the prosecutors. The inadequacy of the prosecutor's preparation of his cases is hinted at as one of the reasons why he is so willing to bargain for pleas. Bargaining for plea in consideration of parole is stated to be common practice. All these facts of the situation are clearly set forth; but here again there is no attempt to go deeply into the causes, or to discuss

the effective remedies, or to present principles and procedures which should govern acceptances of pleas. An abuse so prevalent must exist because of causes embedded in the system and therefore can not be removed merely by destructive criticism or exhortation.

The same abuse is pointed out and discussed in the California Crime Commission report of 1929 (p. 26 ff.) under the title "Compromise of criminal cases." Quoting from the report:

> Few people realize the extent to which criminal cases are adjusted or compromised without trial. Much attention has been given by those who are interested in reforming the administration of criminal justice to changing the trial process. We have heard much of the necessity of reforming our jury system. Volumes have been written upon the subject of insanity defense. Much has been said about procedure upon appeal in criminal cases. As a matter of fact, a large percentage of criminal cases are disposed of before they ever reach the trial process and many of them are never presented to juries at all. Attention must be directed to that comparatively unsupervised field of procedure which precedes trial and during which the adjustment or the compromise of criminal cases is not only possible, but widely practiced.

The commission realized that it did not have the data for a thorough analysis of the difficulty and suggested that a comprehensive study of the subject of compromise in criminal cases should be made, which could provide a scientific basis for the recommendation of changes.

These statements, however, contain enough to indicate that the causes of this abuse lie in or are closely tied up with the volume of work which flows into the prosecutor's office, the inadequacy of the equipment of that office, the inadequacy of the methods of preparing cases and the invasions of the prosecutor into the field of disposition—all matters which are treated in this report under their respective headings.

PROCEDURE UPON PROSECUTOR'S DISPOSITIONS, SUCH AS NOLLES

Of the cases which never reach trial but which are disposed of before or without trial, a considerable percentage represent dispositions which, in theory or in practice, are

made by the prosecuting attorney himself, including nolles or other forms of procedure by which the prosecuting attorney decides and announces his decision to drop further prosecution. In some jurisdictions he is permitted to do this without the approval of the court. In others he is required to get the approval of the court. In others the nolle or dismissal is by the court upon advice or recommendation of the prosecuting attorney. But whether with or without the approval or direction of the court, in effect these habitually represent dispositions by the prosecuting attorney, since the court is dependent upon him for information, and, in the hurry and speed produced by the volume of cases, the court can seldom do other than accept the request of the prosecutor. As we have seen, the acceptance of plea of guilt of lesser offense, which is in effect a discharge or dismissal on the original charge and a disposition on another and lesser charge, is in practical effect often and in some places customarily a disposition by the prosecuting attorney. The same is more or less true of dismissals by the court for want of prosecution.

Practically every one of the surveys discloses the haphazardness and carelessness of the procedure in these prosecutor's dispositions, and practically every one of them arrives at the recommedation of greater formality and more careful procedural steps. We will note a few of the references. The Cleveland report, page 142 ff., contains a detailed description of the haphazardness and carelessness of the procedure in the municipal court of Cleveland in nolles and the analogous disposition known as no papers. In practically every case the prosecuting attorney simply announced that the case is no-papered or nolled, and that was all there was to it. Neither in the court records nor in the records of the office of the prosecutor himself did there appear any statement of the grounds for dropping these cases, and the prosecuting attorney was not able to find in his own office and seldom able to remember, if he knew, why the cases had been thus discharged. The same was shown to be true of acceptances of pleas of lesser offense. As appears from the same report (p. 180 ff.) the same was substantially

true of nolles and acceptances of pleas by the county prosecutor in the trial courts. While the Ohio statute required approval of the court and good cause shown in open court, this requirement was honored in the breach rather than the observance, and, owing to the volume of cases passing through the court, the judge was dependent for his information on the prosecuting attorney. The prosecuting attorney had adopted an office rule that the reasons for nolles should be noted on the original papers on file in his office and on the docket in his office. Even this rule was more honored in the breach and when honored it was by such nondisclosive notations as "midst trial." On pages 205–208, the report recommends that every application for a nolle or similar form of dismissal should be accompanied by a written statement of the grounds therefor, which statement should be read in open court and become a part of the papers in the case, and that this same procedure should govern the acceptance of pleas of lesser offense. The Cleveland report on courts, page 328, contains substantially these same recommendations, namely, that the motion to nolle should be in writing and should specify the grounds, and that no nolle should be granted until ample notice is given to the complaining witnesses and police officers.

Substantially similar facts are produced and recommendations made in the other surveys. See—

Illinois, page 270.
Missouri, pages 146, 370.
Georgia, page 213.
Minnesota, page 31.
California, page 27.
New York (1927), pages 69, 183.
New York (1928), page 17.

Section 305 of the American Law Institute's Code of Criminal Procedure proposes what is, in effect, an abolition of the nolle and a substitution of motion to dismiss with statement of grounds therefor.

As will appear from other parts of this report, the abuses which have grown up in the use of nolles and other forms of prosecutor's dispositions have causes more deep and complex than the mere informalities of procedure, and the

remedy requires more fundamental reforms than mere strictness and formality of procedure. The unanimity, however, with which the surveys recommend these procedural precautions demonstrates that they ought to be adopted and may reasonably be expected to effect some improvement.

THE PROSECUTOR'S PREPARATION FOR TRIAL

We now come to the prosecuting attorney's part in the trial of the felony cases which are tried. In these, the efficiency of the administration of criminal justice surely turns, at least as much as upon any other element, upon the carefulness and adequacy of the trial attorney's preparation for trial. As has been pointed out elsewhere in this report, this efficiency factor is to be judged in the ordinary run of cases and not in those exceptional cases in which, by reason of public excitement and limelight, the prosecutor takes exceptional pains. The surveys, therefore, quite properly deal in detail with this subject of the trial attorney's preparation in the ordinary run of cases. The pictures they present are fairly similar, showing haphazard, inadequate, and careless methods to be characteristic of State prosecution in America, certainly in the large cities.

Perhaps the most complete description of the prevalent methods will be found in the Cleveland report on prosecution. Page 97 ff. describes the negative part played by the municipal prosecutor in the trials and preliminary hearings in the municipal court. The trial prosecutor went into the court without any books, papers, or files upon the cases which he was about to try and presumably knowing nothing about them. He played an utterly negative part in the actual trial. He sometimes acted as a starter for the police or other prosecuting witnesses, but he had no idea of what they would say. The county prosecutor, who will later receive the bound-over felony cases for presentation to the grand jury and trial, did not participate at all in the preliminary hearing. On page 169 begins the description of the county prosecutor's preparation for trial of the cases in the trial court and his knowledge, or rather lack of it, of

the facts of the cases which he tries. There were, of course, too many cases to be tried well with the existing equipment. Here are a few excerpts from this portion of the Cleveland survey:

Page 161—

> Just before entering upon the trial of the first case of the day, the trial prosecutor receives from the assignment commissioner a package of papers consisting of the indictment and other pleadings, the names of witnesses, and notes of the testimony of the witnesses before the grand jury in the cases which might be reached that day. It is quite apparent that he proceeds to try the case with little or no knowledge of its details almost up to the moment of trial, and that his only information consists of the names of witnesses and scribbled or scattered notes of their testimony before the grand jury. At these he has to glance continually to keep the case going. For questions to ask the witnesses he must rely largely on the promptings of the police officer who sits at his side, or on inspiration from the answers to other questions given by the witness on the stand. * * * The prosecutor does not, like the English barrister, have at his elbow a junior counsel who has carefully studied all the law and the facts, and a solicitor who has interviewed the witnesses and who supplies the trial lawyer with thoroughly prepared material.
>
> The trial prosecutor does not receive, either at or before the trial, a comprehensive brief of the facts, setting forth the testimony which may be expected from the witnesses. Where the case involves no special difficulties of investigation or preparation, and especially where the case has been thoroughly developed by the police department, things may go well enough. It is obvious, however, that the State takes more chances than the defense and assumes the handicaps of unpreparedness. * * *

Then on page 169—

> He (the prosecuting attorney) pits his unpreparedness, with such assistance as he may obtain from the police department, against the carefully prepared case of the defendant's attorney. He takes the proof in the way it has been prepared by the police or municipal prosecutor, making the best of what he gets, or, in more serious cases, attempting to remedy the defects or omissions.

Page 170—

> The assistant who has charge of the presentation of the cases to the grand jury has generally, up to the very moment of presenting a case, no familiarity whatever with the case, its facts or proof. He simply calls in the witnesses whose names are noted on the papers which have come up from the municipal prosecutor.

As appears on page 116 of this same report, there was no transcript made of the evidence produced at the preliminary examination, and on page 203 the recommendation is made that there be a stenographic transcript which will become part of the papers transmitted to the trial attorney. A similar recommendation occurs in other surveys, and is provided for in section 51 of the American Law Institute's Code of Criminal Procedure.

This picture, given in more detail in the Cleveland survey than in the others, can be substantially duplicated in any of the others. The Illinois survey in the chapter on The Juries, in Felony Cases, in Cook County, page 226, points out the inefficiency of the system by reason of the fact, amongst others, that cases are often tried by State's attorneys who are unacquainted with the evidence which they are to present and have had no opportunity to confer with the witnesses until the day of the trial. The recommendation is made that an assistant State's attorney be assigned to each case upon its origin and held responsible for gathering the evidence, preparing the prosecution, and trying the case. The prevailing conditions are no doubt well described and are characteristic of the methods prevailing in the larger communities in this country; but the recommendation does not discuss and fails to take account of the necessity, in a law office with such a volume of business, for specialization and classification in the staff. Functional allotment of the work of the office, such as investigation of proof, preparation of trial briefs, actual conduct of the trial, all under some centralized direction or supervision, would probably, on analysis, be shown to be a better system of work distribution than allotment by cases.

The Missouri survey (p. 136) tells the same tale, stating that the prosecuting attorneys of Missouri are, in the main, unable to prepare the State's cases with anything like the thoroughness which the average civil case receives. This is attributed mainly to the inadequacy of the staff furnished to the prosecuting attorneys. Page 138 points out the importance of the State prosecutor's facilities for getting upon

the ground early, while the evidence is fresh. On pages 140–142 the importance of interviewing witnesses previous to trial is noted; and on page 144 the frequency of continuances is attributed to the lack of readiness for trial on the part of the prosecution.

The New York (1927) report (pp. 68 and 122) makes the same recommendation as Cleveland, namely, that a transcript of the evidence in the preliminary hearing be made and furnished the prosecuting attorney. This recommendation is repeated in New York, 1929.

The only dissenting opinion on the subject of inadequacy of the prosecutor's trial preparation is in the Philadelphia report, page 235, which affirms that all important cases are carefully prepared and that in the minor cases the trial attorney acquaints himself with the facts of the case as they are called or about to be called for trial. There is no test stated as to which cases are important and which are minor. As we have learned, particularly from the case histories of offenders, a small larceny case may, from the point of view of crime prevention, be more important than a big murder one.

There are many factors in this problem of adequacy of preparation for trial. The caliber and talent of the prosecuting attorneys; the sufficiency of the equipment furnished the prosecuting attorney by way of number and talents of assistants, clerical assistance, and other types of equipment; the efficiency with which the police departments and other auxiliary services perform their part and the skill with which the coordination between police and prosecutor is organized and operated; these are some of the vital factors. Any condemnation of an individual prosecuting attorney as the sole bearer of responsibility would be superficial anywhere. The surveys are guilty of no such superficiality; for, here and there in them, with varying degree of thoroughness of factual data and analysis, the other factors are mentioned or discussed.

SIZE OF STAFF OF PROSECUTING ATTORNEY'S OFFICE

The number of members of the staff of the prosecuting attorney necessary to an adequate performance of his functions and the extent to which the existing personnel in any jurisdiction falls short of this requirement, vary so from place to place that, though inadequacy is probably existent everywhere in this country, no statement of either fact or opinion can be made which would be applicable generally throughout the country. An intensive efficiency study in one or two representative cities would be requisite, before any principles or standards could be formulated. Such a study would need to be preceded by conclusions or assumptions as to the scope of the functions of the prosecuting attorney; a subject which will be discussed shortly. To what extent is detection and investigation to be placed within the office of the prosecuting attorney? To what extent is ascertainment of facts bearing on disposition, as distinguished from guilt, to be part of his duties? To what extent is control over the issuance of arrest warrants to be placed in his charge? Questions such as these must first be answered before the size of the staff and the qualifications, specializations, and organization of the staff can possibly be determined.

COMPENSATION AND CALIBER OF PROSECUTING ATTORNEY

The caliber or talent of an individual is largely a matter of opinion and one on which definite standards can not be formulated. Generalizations about the caliber of those engaged in prosecution in American communities must be avoided. Some of the surveys contain hints, or worse, that the prosecuting attorneys are lacking in requisite ability. The Cleveland report on prosecution attempted something like a more definite appraisal. On page 132 ff. some facts were given regarding age and length of period of practice of the municipal prosecutors, as well as the opinions of members of the local bar about the incumbents of the office of

the municipal prosecutor; similarly on pages 167–168 regarding the county prosecutors.

The Missouri and Cleveland reports discuss briefly the question of compensation or salaries. The Missouri report (p. 134) points out that in many Missouri counties the salary granted to the prosecuting attorney is inadequate to attract lawyers with ability to earn a moderate income through private practice, and consequently they eke out their incomes by private practice. The Cleveland survey, page 214 ff., after discussing the relationship of salary to caliber, concludes that the salary scale in the prosecutor's office should be increased from top to bottom so as to make it inviting to men of talent. This subject of the appropriate salary scale of the prosecuting office receives a more or less cursory treatment in most of the surveys. One does not need assistance from these surveys, however, to be able to think out for himself that a salary scale such as that of Cuyahoga County, Ohio, running from $3,000 to $5,500, is too low to attract normally the talent necessary for conducting the important work of prosecution in a county of over 1,000,000 population; and the same condition exists elsewhere. Unquestionably there needs to be an elevating of the whole salary and compensation scale in this field of prosecution, if the necessary talent is to be obtained.

The effect of the term of office and methods of appointment upon the caliber of the prosecutor and his assistants receives hardly any treatment or discussion in the surveys. The Cleveland report on prosecution attacks the two year term of office as too short and goes on to say (p. 215):

> Furthermore, the frequent change in the personnel of the assistants or the change of assistants with each change in the political complexion of the chief is an absurd piece of inefficiency. With the exception of the first assistant, to whom the chief prosecutor delegates some of his discretionary powers and whom he can use for confidential matters, a competent assistant should be kept as long as he will stay. If the community can not succeed in inducing the prosecutors or the political organizations to institute such a civil service system, this should be then established by law. The discharge of a competent assistant (other than the first assistant) for political motives should be treated by the bar association as unprofessional

conduct on the part of the prosecutor, since he thereby subordinates the administration of justice to partisan politics.

There can be no doubt that increasing use of civil service methods in the selection and retention of the assistants and consequently less turnover is essential to the requisite quality of service.

OFFICE EQUIPMENT, SYSTEM AND METHODS OF PROSECUTING ATTORNEY

The Cleveland report on prosecution includes some study of the office equipment, office system and office methods of the prosecuting attorney. The other surveys here and there may refer to this subject in a passing way. In none of them is the subject treated with the thoroughness which its importance justifies. The quality of the product, especially in an institution with such a volume of work as that of a prosecuting attorney in a large city, is as depenent upon the structural organization of the office, the office system, working methods and the like as upon any other factor. The Cleveland study alone can hardly be considered as supplying sufficient data on these subjects; but it does indicate conditions which we all know to exist in many other places. On page 118 ff. is contained the description of the office organization and office methods of the municipal prosecutor. These are shown to be haphazard and a hurly-burly which leaves no records behind. Thousands of complaints are dropped without any record whatever concerning either their number or their merits. The offices were physically too small for good work, sometimes more than one assistant occupying the same cubbyhole. There was no managing clerk, in fact, no clerks, no stenographer, and no messengers. There were no principles of distribution of work amongst the staff. There was little that could be called executive direction or the laying down of executive or administrative policies. There was laxity in the custody of affidavits upon which warrants of arrest were issued. There was no office bookkeeping or docket system. As described on page 163 ff. of this Cleveland report, the office

system of the county prosecutor compared very favorably with this picture of the municipal prosecutor's office, but was poor for an office of such importance and responsibility. Page 194 ff. contains the conclusion and recommendations which the author draws from the facts on this subject, namely, that the chief muncipal prosecutor should be primarily an executive organizing and directing his office structure, with adequate specialization of assistants, and with office records which will form continuous and periodic checks upon and accountings of the work, with a managing clerk who would supervise the routing of the work from one member of the staff to another and with other office equipment and methods obviously necessary for an organization with such importance and volume of business. Similar recommendations are made on page 197 ff. regarding the office of the county prosecutor.

For work of the quality needed in so important a matter as that of the administration of justice, surely modernized methods of office organization, staff specialization, office management and direction, and accounting system are requisite.

RELATION OF PROSECUTING ATTORNEY TO DETECTION OF OFFENDER OR ASCERTAINMENT OF PROOF

Obviously the quality of the work of any official turns upon the degree of his responsibility for the performance of the function assigned to him, his qualification for that function, the equipment furnished for the performance of that function. It would seem plain, therefore, that the basic questions to be put in any efficiency analysis of the prosecuting attorney in America are, what is the appropriate function of the prosecuting attorney and to what extent is he given responsibility and equipment for that function and to what extent does he fail to cover that function or does he go outside of that function. These basic questions can not be said to have been posed, presented, looked into or discussed with any degree of searching or

thoroughness in any of the surveys. The surveys contain much factual data which would be relevant to such an inquiry, but none contains any thoroughgoing research into it. Obviously, however, the making of our criminal justice an effective agency for the performance of its part in the prevention and reduction of crime requires that this office of prosecuting attorney be given a definite function, for the performance of which it be made completely responsible and adequately equipped. The prosecutor will impair the quality of his own work, if he invades fields which belong to others. A comprehensive study of the appropriate functions of the prosecuting attorney still remains to be done. It is another subject into which the pending Boston study hopes to go more deeply.

Looking into the surveys for data relating to this matter of the prosecutor's function, particularly his activities in the field of the detection of the offender and ascertainment of proof of the offense: The Missouri survey (p. 142) intimates a preference for a system in which the prosecuting attorney would direct all the investigational work and, in support of the idea, cites the example of the administration of Federal justice in which the Department of Justice at Washington supervises and assumes charge of the detective and investigational work. This suggestion, however, fails to take account of the fact that, in the Federal administration, the central Department of Justice and not the local district attorney is the agency which has charge of this activity, and that, therefore, a State department of justice, not the county prosecutor, would furnish an analogy. Nor does the Missouri survey enter into any analysis of the effect which the prosecuting attorney's entrance into the detective field would have upon his trial work, nor the effect on the police departments.

The Cleveland survey (p. 198) recommends that the county prosecuting attorney be a sort of local attorney general directing the whole process of criminal prosecution somewhat analogously to the Federal Attorney General. This survey also fails, however, to face, present, and discuss the complex and intricate problems of structural organization of the county prosecutor's office, if he were to perform such a function, and the relationships between it and the police; nor does it even so much as hint at the existence of the problem of the effects upon the quality of the work of the prosecuting attorneys as trial lawyers which might ensue from their habitual entrance into the investigational field.

A glimpse into the nature of this problem can be caught from the chapter in the Illinois survey on the McSwiggin assassination as a typical incident of "Organized Crime in Chicago" (p. 832 ff.). As may be remembered, McSwiggin was an assistant district attorney of Cook County, Ill., who was murdered while he was riding in an automobile with some notorious gangsters. The purposes which he might have been pursuing at the time are not known, the more favorable version being that he was engaged in the process of detecting certain gang murders. This interesting chapter of the Illinois report is simply descriptive of organized crime at work in Chicago, and though the author does adorn a tale, he does not attempt to point his moral. On every page of his report the discerning eye will find evidence of the effects upon the prosecuting attorney's work when the latter engages in detective activities. His work is sensationalized, he is drawn more and more into politics, his methods create distrust, all of which impair his quality as an attorney; though this, as aforesaid, was not pointed out by the author.

The report of the attorney general of Alabama for 1922–1924 (p. 10), contains the interesting recommendation that there should be attached to the prosecuting attorney's office a corps of solicitors whose duty it shall be to supervise the ascertainment of the evidence in the early stages of detection, get upon the ground soon after the commission of the crime and have authority to compel testimony. This is a passing reference to a real need, namely, to furnish the investigational processes with the requisite legal talent. How to organize this without detrimental reflex effects upon the quality of the prosecuting attorney's or police department's work is the problem.

Bearing upon this subject of the relationship of the prosecuting attorney's function to the detection and ascertainment of proof, is the subject of the relationship of the prosecutor to the coroner's inquest in homicide cases. The Missouri report (p. 142) points out that it is the duty of the prosecuting attorney to be present at the coroner's inquest, but that he fails to perform his duty and that he should be required by law to do so. Illinois (p. 599) recommends that the prosecutor participate in the coroner's inquest in homicide cases. The 1927 report of the New York Crime Commission (p. 91) and the report of the crime survey committee of Philadelphia (pp. 96, 454) recommend the abolition of the office of coroner and that the prosecuting attorney have a medical examiner attached to his office who will make the autopsies and inquests.

THE PROSECUTOR'S PARTICIPATION IN THE DISPOSITION OF OFFENDERS

The proceedings against the accused may be roughly divided into three stages; first, the identification of the offender and the ascertainment of the proof; second, the trial; and, third, the disposition of the offender if he plead guilty or be convicted. The prosecuting attorney's relationship to the first stage has just been discussed. In the second or trial stage, he is, of course, the attorney for the prosecution and in exclusive control of the performance of that function. What is or should be his relationship to the third stage, the disposition of the offender? From the developments in the trial, the facts regarding the crime will be known to the court. Should it be the duty of the prosecutor to be an advocate in regard to the sentence? Should it be his duty to gather and present facts, other than those relating to the crime, which might bear upon the sentence, or should the matter of sentence or other disposition be treated as one not falling within the province of an attorney's advocacy? Here again we have a fundamental problem which needs to be thoroughly envisaged and solved before we can hope to build up an efficient system of criminal justice; and yet here again we have a problem of which the surveys seem largely unconscious. They contain little of fact data or analysis leading toward a satisfactory solution. The New York Crime Commission, 1928 report (p. 17) says in one of its conclusions:

> The duties should be imposed upon the prosecuting officers of obtaining the records of any and all persons indicted and, upon conviction, to lay such records before the judge imposing sentence.

This represents a definite conception of the prosecutor's duty as including the gathering and presentation of the facts relating to disposition, as distinguished from those relating to guilt. This particular recommendation of the New York commission is limited to the bare facts of the criminal career of the convicted man, and contains no reference to other types of facts concerning the offender, without knowledge of which no intelligent disposition would seem to be possible but for the ascertainment or interpretation of which the prosecuting attorney is not equipped or proposed to be equipped. And as we shall see from other references to the reports of the New York commission, that commission recommends that these other types of facts be ascertained for and produced to the courts by the probation, psychiatric, and other investigational staffs; showing that the commission does not envisage a system in which all the data bearing on disposition are to be presented by the prosecuting attorney.

The Cleveland report on courts (p. 323), asserts that the prosecuting officials are not the best advisors to the court on matters of sentence; that they know only a part of the story of the accused, have a bias and are not trained to the difficult task of appraising the possible results of treatment outside of an institution, and that the prosecuting attorney is not familiar with those "imponderables" necessary to the formation of a judgment on the question of probation.

The Illinois report (p. 216) points out the large percentage of felony cases in which the prosecuting attorney accepts a plea of misdemeanor, and expresses the opinion that this represents a way of affording an easy escape from punishment for felony. This indicates that, in the opinion

of the author, this practice of the prosecuting attorney's acceptance of pleas of lesser offense is an entrance by the prosecuting attorney into the field of disposition as distinguished from trial of the guilt issue. The report, however, contains no analysis of the appropriate field of the prosecutor in matters of disposition. On page 325 of the same survey, there is criticism of the freedom with which probation is granted, which criticism occurs, significantly, in the chapter on the prosecuting attorney. The author states that probation is held out as a reward for plea of guilty, and the author rightly contends that the determination of probation should turn upon facts relating to the offender, and that this use of probation as a reward for pleas of guilt represents a confusion between the guilt issue and the dispostion issue. Similarly, in this same volume on pages 474–475, this time in the chapter devoted to probation and parole, the Illinois survey points out the confusing effect, upon the grant of parole, of promising parole as a reward for pleas of guilt, and that the prosecuting attorney, when accepting these pleas as a basis for earlier parole, is meddling in a function which does not belong to him but to the parole board. The author of this chapter realizes that the grant of parole should turn upon facts relating to the offender as a parole risk and be determined by a tribunal, such as the parole board, which ascertains and presumably understands that type of facts and that, consequently, parole falls outside the province of the presecuting attorney whose function is concerned with the type of facts which relate to the issue of guilt or innocence. The same confusion of function is hinted at on page 549 of the report in relation to probation, where the author criticises the acceptance by the prosecutor of pleas of guilt of lesser offense as a means of bringing cases within the probation statutes instead of confining such acceptances to those cases in which there is inadequate proof of the original charge.

The surveys, therefore, do contain hints here and there on this problem of the differentiation between the guilt issue and the disposition issue and its bearing on the function of the prosecuting attorney. In none of them, however, is there a thoroughgoing analysis of this problem, nor a thoroughgoing discussion of the appropriate place of the prosecuting attorney in the disposition procedure. This, therefore, is another part of the field which needs further plowing.

PUBLIC DEFENDER

The results of a criminal case are influenced by the methods and qualifications of the defense, as well as of the prosecution. The surveys, being interested mainly in the public's machinery of criminal justice, devoted very little attention to the problems of the defense. The Illinois report (p. 410) contains a rather sketchy discussion of the type of attorneys who generally represent the accused and a somewhat vague recommendation for the institution of a public defender. The Cleveland report on courts (p. 312) recommends a system of unofficial voluntary defenders for indigent accused.

There has been considerable public discussion and a considerable literature upon this subject of the public defender. The surveys have added very little to the material on the subject. Possibly these researches did not produce data from which definite conclusions could be drawn. The need for a public defender might arise from conditions incident to features of the present system and methods which would be removed if the conclusions and recommendation of the surveys should come to be carried out. This problem of the public defender can not be deemed to be ready for solutions or recommendations without an analysis of the bearings thereon of the reforms proposed or indicated in this report; and the material for such an analysis is not as yet available. The public defender has been in operation in several cities for a considerable period and a research survey of the facts concerning its workings would no doubt yield valuable data upon the problems of the place and methods of the defense in the administration of criminal justice.

THE ADMINISTRATIVE AND WORK METHODS OF THE MUNICIPAL COURT—RECORD SYSTEM

We now proceed from the subjects related most closely to the prosecution to those which relate particularly to the courts.

The surveys contain considerable material on the administrative processes and working methods of municipal and police courts, all tending to show a highly casual, haphazard, careless, disorderly system or lack of system. While there are, of course, variations in the different parts of the country, there is a striking similarity between the pictures afforded by the descriptions of the way municipal, police, etc., courts act and work. No attempt will be made in this report to summarize the innumerable details of present methods nor to enumerate all of the recommendations for improvement.

One topic dealt with by several of the surveys is that of the record system of these courts, particularly the record of the cases, including such matters as dockets and journals. In the city court of Bridgeport, Conn., for instance (Connecticut p. 445), no record was made of any case until after it had been disposed of, so that there was no record of the status of any case while pending. The Georgia report states (p. 217) that a case received different docket numbers at different stages, as, for instance, one docket number on filing and another when disposed of or a new number every time the case was continued. The Cleveland report on prosecution (p. 120 ff.) contains an elaborate and detailed description of the record system in the municipal court, under which, instead of each case having its own separate page in the docket and record books and carrying its own number throughout the case, the case was noted and recorded in so many different places as to make the ascertainment of its status at any moment an almost prohibitive task. Errors naturally occurred not only on the records but were reflected in the disposition of the cases. The Cleveland report on courts (p. 292 ff.) also described this record system, pointing out the opportunities that a backward record system offers for miscarriages of justice. This report also contains the following statement of the purposes and possibilities of a record system:

> A record system should accomplish three things: First, enable the clerks and the judges to prepare and follow each day's business; second, leave an accurate, easily accessible record of what has happened in each case to date; third, automatically build up statistics which the chief justice and the public ought to know as an authoritative basis for appraisal of the courts' work and the basis of its continuous improvement.

The record system of the municipal court on its criminal side should be as careful as on its civil side. Each case should have its own number, its own place in the record and index books. There is no such thing as an unimportant case. Carelessness and casualness of record keeping is as destructive of efficiency in this court as in any other court or in any other enterprise.

METHOD OF CONDUCT OF TRIALS OF CASES IN MUNICIPAL COURTS

Some of the surveys contain descriptions of the methods applied to the conduct of the court room and of the trials in the municipal courts. The Cleveland report on prosecution (pp. 97–116) gives several dramatic descriptions of the municipal court in action, showing a lack of order and decorum utterly prohibitive of careful work, and showing much of the trial conducted by subdued conversations around the bench. This description dwelt in detail upon the unsegregated and unclassified dockets and calendars, with cases of every degree and kind—city misdemeanors, State misdemeanors, State felonies, regulatory offenses like building code cases, preliminary examinations in the gravest of offenses like murder—all grouped in a haphazard fashion in one docket, all receiving substantially the same sort of attention and procedure and disposed of with a rapidity and casualness that precluded all possibility of careful knowledge or analysis of the facts or of intelligent disposition. A similar picture is given in the Cleveland report on courts (p. 279) and in the Illinois survey (p. 308) where

the whole procedure is called a "mockery of law administration," stating—

> The dockets are badly congested, the physical equipment and atmosphere of court rooms are usually bad, the sessions of the court are generally limited to the first half of the day, and proceedings are most informal.

The Illinois report on page 405 ff. gives a detailed description of the methods in the various district or branch courts. A similar picture is given in the Baltimore Criminal Justice Commission's Report for 1923 (p. 16).

The picture is too well-known to need further detail here. There needs to be as careful and orderly a trial and disposition in these courts as in any other. One of the means toward this accomplishment, discussed particularly in the Cleveland report on prosecution (p. 198 ff.), is that of carefully segregated and classified calendars and dockets.

> The arrangement and subdivision of work in the municipal prosecutor's office must necessarily dovetail into the procedure of the municipal court. The full benefit, for instance, of assigning specific classes of cases, such as city misdemeanors and State felonies, to specific trial assistants could not be obtained if these various classes of cases be thrown indiscriminately into the same morning's court docket. Careful preparation of a case would become partly wasted effort if the court procedure be so hurried as to give no opportunity for presenting the case well. * * * *
>
> On every indiscriminate calendar, composed of cases of every degree of importance and difficulty, there are many cases sufficiently clear and simple to warrant speedy and summary trial. The trouble is that these cases set the pace, and by a process of contagion affect the conduct of cases which merit a more patient inquiry into the facts and law, and the whole calendar tends to be given this hurried, inadequate, slipshod treatment.
>
> * * * * *
>
> A segregated docket, separating the times or places of trial of cases which do not require the presence of the prosecutor from those which should be conducted by him, of city from State cases, State felonies from State misdemeanors, and within these classes, cases normally triable in a summary or speedy fashion from those where justice demands less speed, would enable the prosecutor to obtain the most efficient results from the work and the ability of his assistants and make thorough preparatory work useful and effective. The appropriate importance of each case would stand out better if the case be upon a calendar devoted to cases of a certain degree of gravity than is possible in the present indiscriminate commingling. The disadvantages of keeping lawyers for the defense and witnesses awaiting around would be reduced. There would be brought about an atmosphere of orderly and open administration of justice.

The report then proceeds to discuss some of the principles of classification of cases.

This matter of the arrangement, segregation and classification of dockets and calendars in the municipal court, as is shown by the above excerpts from the Cleveland report, is closely related to the efficiency of the police and the efficiency of the prosecution. Systematic classification and specialization in the work of the police or the prosecution would be impaired and rendered comparatively valueless unless it fit into police court procedure. This is mentioned simply as an illustration of the integrated nature of the problems of the administration of criminal justice, how every method or procedure used in any part affects the methods and quality of every other part, and how dangerous it may be to make a change in any part without thinking out the reflex effects upon every other part. This principle of integration, of the internal harmony of the whole system of administering justice, from the policeman on the beat through courts and prosecutors to penal institutions, is one that could be illustrated by almost any item in any of the surveys, and is mentioned again at this point because the above quotation from the Cleveland report furnishes so apt an illustration.

While the subject of the municipal court is more emphasized in some of the surveys, as Cleveland and Illinois, than in others, for instance Missouri, there does emerge, from the surveys as a whole, the outstanding inescapable conclusion, that if we would get anything approaching a tolerable system of justice in this country, there needs to be a very radical overhauling in this part of the field. In its rank and standing, in its working methods, in its equipment, and in its judgments, the municipal or police court must be made an organism which has prestige, is orderly and dignified, is adequately equipped, thorough in its knowledge of the facts of each

case and in its analyses, and careful, modernized, and scientific in its dispositions.

DELAYS AND CONTINUANCES IN MUNICIPAL COURT AND EFFECT THEREOF

One matter stressed in some of the reports is that of the delays in the trials and dispositions of cases and the frequency and length of continuances. This is undoubtedly an evil generally prevalent through the country. The Missouri survey (p. 167 ff.) gives statistics as to the effects of continuances, which statistics indicate that cases in which continuances are long or frequent tend to be lost, that is, dismissed or discharged, more than cases which are promptly tried. The Georgia report (p. 187) also produces statistics which tend to corroborate one's intuitive impression that delay in bringing a defendant to trial operates in the defense's favor, and that in most instances the chances of conviction steadily decrease the longer the case is pending.

This evil of frequent and lengthy continuances of cases in the municipal courts is simply one of the manifestations of the prevailingly careless and casual conduct of cases at this stage and in this court, rather than an evil separable from or different from or more important than the other manifestations of the same nature. Not that too much time is given to any case by either the judge or the prosecutor or the police or any other of the public agencies. Just the contrary; the time given is inadequate for efficient service. The intervals during which the cases are neglected or ignored, except possibly by the accused in the preparation of his defense, constitute the trouble in this connection. There is no lack of promptness or speed of action when and while the case is actually being acted upon. Just the contrary; there is too much speed. See Cleveland (p. 113).

THE CALIBER OF JUDGES OF THE MUNICIPAL COURT

Realization of the importance of the courts which have jurisdiction to try misdemeanor cases and hold preliminary examinations of felony cases will bring out the importance

of having, as judges of those courts, men who by training, experience, and temperament are qualified for this very important organism of the administration of justice. The surveys did not generally seek to appraise the caliber of the existing judges. One or two of the reports do deal more or less thoroughly with this aspect of the problem. Cleveland (p. 252) has a short, rough appraisal and found, in general, the caliber of the judges of the municipal court to be unsatisfactory. The Illinois survey (p. 401) presents data as to age, legal education, etc., and sought to rate the incumbents as to legal ability, courage, and independence. Appraisal of caliber is difficult to support by factual data, as distinguished from expressions of opinion. When the Illinois report states that the quality of the judicial personnel of the Chicago Municipal Court is such, that even with an active, honest, and capable chief justice and a number of good associate justices, the personnel of the court is, on the average, unsatisfactory and the product is not what it should be, we are not skeptical as to the correctness of the statement.

The surveys enter into very little discussion of what should be done about it. Cleveland (p. 276) presents some suggestions of changes in the method of nominating and electing judges. The Baltimore report of 1923 (p. 13) recommends higher salaries for the judges of these courts. Such a recommendation needs little support in argument. There can be no doubt that until the salaries of the judges who sit upon the cases now intrusted to these courts be placed on a scale which will indicate and reflect their importance and attract men of the requisite caliber, the public will have only itself to blame if the results of the work of these courts be unsatisfactory. The salary of the judges, however, is but one of many factors. As springs forth from every page of the surveys, not only adequate caliber on the bench but also adequate caliber in the prosecutorial, clerical, probationary, and other staffs connected with the courts, and a structural organization and equipment which will definitely classify personnel and organs as to function, locate responsibility, and provide supervision and executive direction, all these are equally necessary.

RURAL MINOR COURTS

The problem of criminal justice is not exclusively urban; it is also rural. In cities which have abolished the old office of justice of the peace, the problem is that of the police or municipal court. In other cities and in the rural counties where the justice of the peace performs the function of trying misdemeanors and examining into felonies, the same necessity for reform exists. The subject is not treated comprehensively in the surveys. The variations amongst counties as regards population, urbanization and other factors are so great, that perhaps somewhat corresponding variations would be needed in the judicial organization. At any rate, the subject has not been sufficiently covered in the surveys to warrant a statement of conclusions and recommendations. One notes a tendency to recommend that justices of the peace as criminal courts be abolished and that there be established in the rural counties minor criminal courts well equipped for the performance of their function. This recommendation is made in the New York (1928) report (p. 21) and the New York (1927) report (pp. 49 and 185).

THE FUNCTION AND IMPORTANCE OF THE PRELIMINARY HEARING

The municipal or police court usually has the two functions of a trial court for misdemeanor cases and a court of the preliminary examination of felony cases. Much that is disclosed in the surveys relates to the administration of both of these functions. As appears from all of them, the volume of cases thrown upon the equipment of the courts of preliminary examination in American cities is so great and the equipment so inadequate, that the function of the preliminary examination, namely that of sifting out cases which do not deserve further prosecution, is carelessly and inefficiently performed. This is indicated in the descriptions of the court in action as well as in the statistical results; and the statistics show a disturbingly large percentage of cases which survive the preliminary examination

but fall by the wayside in the grand jury and a further surprisingly large number of prosecutions which survive the preliminary examination and grand jury stages only to fall by the wayside later.

None of the surveys contains a definite facing or discussion of the problem of the need for and appropriate function of the preliminary examination under modern American urban conditions. The Missouri report (p. 164) contains the sentence "The courts of preliminary hearing play an unimportant rôle in the administration of justice." It is, however, not clear whether this is intended as a statement of fact or as a statement of principle; that is, as a statement that, as a matter of fact, owing to the way these courts operate in Missouri they fail to play an important rôle there, or whether it be an expression of opinion by the author that these courts have no important rôle to play. If this statement be intended as an appraisal of the value of the preliminary hearing as an institution, as distinguished from an appraisal of the quality of the actual Missouri operation of the preliminary hearing, the report fails to support the statement by any discussion or analysis of the problem. If the statement be intended to mean that there is no important rôle for the preliminary examination to play under modern urban conditions, then, of course, the conclusion would follow that the preliminary examination, as we now know it, should be abolished; for there certainly can be nothing but damage resulting from retaining an organism which has no important rôle to play.

Later in the Missouri report (p. 128 ff.) there is a discussion as to whether prosecution by information, eliminating both the preliminary examination and the grand jury, would not be a better system. The discussion points out that, in one way or another, a Missouri prosecuting attorney is in position to bring and continue a prosecution regardless of the disposition in the preliminary examination. The author goes so far as to say "There is much support of the view that the preliminary hearing now provided for contributes nothing to the cause of justice, but on the contrary increases the costs, is one of the main causes of delays in prosecution,

and gives the defendant an undue advantage over the State." In the major findings of the study of prosecution in this Missouri report (p. 156), there is a finding to the effect that "the laws providing for a preliminary hearing where prosecutions are started by the prosecuting attorney as a check upon his power has proven utterly impotent for that purpose and result in nothing but expense, delay, and advantage to the defendant." There follows, however, a recommendation (p. 160) for a statute providing that preliminary hearings be conducted by the circuit clerk or a commissioner appointed by the circuit court, with a provision that no bail bond be accepted until approved by the circuit judge or circuit clerk in vacation. This recommendation had not been preceded by any factual data or discussion bearing upon or demonstrating the superiority of clerks or commissioners over courts for preliminary examinations. This may have been one way of saying that the authors do not consider preliminary examinations important enough to receive the attention of courts; but they did not say so. On page 358–359 of this Missouri survey, there is the recommendation that the accused be taken before a magistrate and given an opportunity to make a statement; but there is no suggestion that this be substituted for or in anywise affect the preliminary examination. We see, therefore, that the authors of the Missouri reports were aware of the problem or question of the part to be performed by the preliminary examination, its place in the administrative structure and its methods, but were in doubt as to their own views or recommendations. The New York (1927) report (pp. 66–67) presents the idea that the preliminary examination should not be a trial but simply a rather casual and informal inquiry or hearing as to whether the accused should be held for trial. There is no discussion of the value of an institution that has so light a responsibility as suggested by this recommendation.

So, all in all, the conclusion must be arrived at that the surveys to date do not contain anything like a thorough facing or discussion of the problem of the need for a preliminary examination, what shall be the nature of the tribunal holding same, what shall be the scope of its function, and what shall be the procedure. If the preliminary examination is to be retained, it should be given a definite field and responsibility and an equipment and procedure adequate for the performance of that function and the assumption of that responsibility. The pending Boston survey intends to go more deeply into this problem. There can be no doubt that, to whatever extent the preliminary examination is retained, its work should be done in a thorough and responsible manner, and the court and prosecuting officials should be given an equipment which would enable thorough and responsible work to be done.

The Illinois survey (p. 381) suggests, as a means of promoting more careful work by the preliminary examination court, that in the case of every discharge the magistrate state his reasons therefor in writing, and that a transcript of the evidence be made in every preliminary examination. A similar recommendation occurs in other surveys.

JUDGE'S CONTROL OF TRIAL

A phase discussed in the surveys with exceptional frequency is that of the judge's control of the trial. The references are—

New York (1928), page 19.
New York (1929), page 58.
Illinois, page 188.
Missouri, page 174.
New York (1927), pages 61 and 183.
Michigan Report of the Commission of Inquiry Into Criminal Procedure, page 13.

All these unite in recommending that in the State courts, as now in the Federal courts, the trial judge be given the right to comment on the facts and the evidence and thus, to an increasing degree, influence the verdict of the jury. The surveys which are not mentioned in the above references contain no discussion on this subject, and consequently, in so far as the subject is mentioned at all, the conclusions are all in favor of this power of the judge to discuss and concretely comment upon the facts and the evidence.

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THE GRAND JURY

Among the organs or instrumentalities of the administration of criminal justice whose structural organization, function, qualifications, and equipment involve important problems bearing upon the efficiency of the administration, are the grand jury and the trial jury. In some States information, as distinguished from indictment, is used to such an extent that the grand jury plays but a small part in the process. In others, in which the constitution permits either information or indictment, information has taken over a large part of the field of formal accusation. In most of the States, however, indictment by grand jury is still required or habitually employed for all or a large proportion of felony cases. Even where the accusation may be initiated through the grand jury, as a matter of actual practice a predominant percentage of the cases also receive a preliminary hearing in a municipal, police, magistrate's, or similar tribunal. Consequently a predominant percentage of the cases which reach trial will have gone through two preliminary trials or hearings, namely, the preliminary examination and the grand jury presentation. A goodly percentage of those which do not reach trial will also have gone through these two preliminary hearings. Obviously, therefore, such a system throws upon the prosecuting officials and other parts of the administration the load of the necessary investigations and the preparatory, executive, forensic, clerical, and other activities required for these two hearings. The question naturally arises whether two be necessary; which comes down to whether or not there remains sufficient importance and value in the grand jury stage to justify the mandatory continuance of that stage, at least in those cases which receive a preliminary examination or which would be entitled to a preliminary examination.

As the surveys are efficiency studies of criminal justice, they naturally devote more or less attention to this subject, and where this attention is devoted, the conclusion seems always to be arrived at, that under modern conditions the grand jury is seldom better than a rubber stamp of the

prosecuting attorney and has ceased to perform or be needed for the function for which it was established and for which it was retained throughout the centuries; that, consequently compulsory grand jury hearing throws an unnecessary work burden upon the administration of justice, which burden should be lightened by eliminating the necessity of indictment and permitting prosecution to be instituted and accusation to be made through the simpler processes of information.

The Illinois survey (p. 299) states—

> Every prosecutor knows, and every intelligent person who ever served on a grand jury knows, the prosecuting officer almost invariably completely dominates the grand jury. * * * The grand jury usually degenerates into a rubber stamp wielded by the prosecuting officer according to the dictates of his own sense of propriety and justice.

On page 218 this same report sets forth, as one of its conclusions—

> That the prosecution in Illinois is unduly handicapped by the constitutional requirement of an indictment by the grand jury. The innocent citizen need not fear unfounded prosecution by information. If the State's attorney wished to prosecute him, he could easily obtain an indictment from a grand jury which he dominates.
>
> It is not the difficulty in obtaining indictments, but the delay and consequent tiring out of witnesses called to attend repeated hearings, which puts the prosecutor at a disadvantage as compared with the prosecutors in Michigan and Wisconsin where the information has largely supplanted the indictment.

The report then recommends that prosecution be by information except when the court orders grand-jury presentation. The New York (1928) report (p. 167) makes the same recommendation. The Connecticut report (p. 355) asserts that information has been used in that State for a century, except in capital or life cases, and that this system operates to the satisfaction of the community. The Minnesota report (p. 30) advises the increasing use of information as permitted by the State constitution, and the relative decreasing use of indictment. The Cleveland report (p. 176) makes similar observations concerning the value of the grand-jury stage and the burden it throws

upon the prosecution, and on pages 210 ff. and 248 recommends that the double preliminary examination, so to speak, be abolished, and that where there is or may be a preliminary examination, the grand-jury stage be dispensed with and the prosecution be thenceforth instituted by information. The National Crime Commission's report supports these same recommendations and its subcommittee on pardons, probation, etc. (p. 31), rather summarily dismisses the grand jury as a useless step. Section 118 of the American Law Institute's Code of Criminal Procedure provides for prosecution by either information or indictment. The whole subject had received extensive discussion long before the surveys. Indeed, Jeremy Bentham a century or so ago made these same remarks about the value of the grand-jury stage. The unanimity of expert studies of the administration of justice on this subject of the grand-jury may be accepted as demonstrating the advisability of such constitutional and statutory changes as will permit, increasingly, the elimination of the necessity for a grand jury indictment. The grand jury could remain available to the court and prosecution when needed for special situations. Twenty-four of the States of the United States already dispense, to a greater or less degree, with the requirement of a grand-jury indictment.

JURY SERVICE—WAIVER OF TRIAL JURY

A certain percentage of the cases reach jury trial. As has been so often noted in this report and as shown by the statistics, the percentage of cases disposed of by and through jury trials is much less than popularly supposed and less than disposed of by other processes; and that percentage tends to decrease. Consequently, to assure the transfer of emphasis from trial procedure where less needed to the other stages and modes of administration where more needed, this report abstains from dwelling at length on those portions of the surveys which relate to the trial jury and trial procedure, though many of the surveys devote considerable portions to that subject. As regards the methods of selecting the jurymen and exemptions from jury service, the

statutory exemptions vary so much from State to State, that anything like a general conclusion of fact or recommendation would be impossible. In the New York (1928) report (p. 163) will be found a discussion of this problem of exemption from jury service.

Jury trial, of course, involves more labor for the administration than trial without a jury. Selection of the jurors itself means considerable in the way of detailed work for the prosecuting attorney, the court and the clerical departments. There is no need to go into further detail as to the relative work load involved in a jury and nonjury trial. The movement, therefore, to permit a waiver of jury trial by prosecution and defense is in the direction of an economy which might be reflected in the greater efficiency of administration. The surveys indicate an increasing body of opinion in favor of this movement. The Illinois report on page 219 concludes that compulsory jury trial increases the work load and delays involved in prosecution and recommends that waiver of jury be permitted. Almost all the surveys comment favorably upon the results in Connecticut and Maryland where such waiver has been allowed and availed of. The Connecticut report (p. 337) contains an account of a questionnaire sent to judges, prosecutors, public defenders, and practicing attorneys as to the degree of satisfaction with the system of jury waiver, and found the favorable replies to predominate. In California, the constitution permits such waiver, and the report (p. 30) expresses the hope that the privilege will be increasingly availed of. Recommendations in favor of such waiver, excepting in capital cases, will be found in New York (1929) (p. 98); New York (1928) (p. 20); New York (1927) (pp. 56 and 180); Michigan Report of Commission of Inquiry Into Criminal Procedure (p. 9); Rhode Island Second Report (1929) of the Criminal Law Advisory Commission (p. 11); report of subcommittee on pardons, etc., of the National Crime Commission (p. 33); and it has been incorporated into the American Law Institute's Code of Criminal Procedure, section 277.

THE FUNCTION OF THE JURY

The surveys contain little by way of analysis and discussion of the function of the jury in the administration of criminal justice and of the extent to which some of the dissatisfaction with juries might be attributable to the entrance by juries into fields which are inappropriate to their capacity, particularly intervention in or concern with questions of sentence and disposition. Thorough research into this question would probably disclose that the part which juries are permitted to play in sentence and disposition, as distinguished from the fact issue of guilt or innocence, is a factor of seriously deteriorating effect upon the efficiency of the administration. There are a few hints of this in the surveys. The Georgia report (p. 194) mentions that under the Georgia statutes the jury is given permission in certain felony cases to recommend a punishment appropriate to misdemeanors, and that, in all felony cases not punishable by life imprisonment, the jury is given the power to prescribe a maximum term. The report then quotes from a report of a grand jury which criticizes this power as interfering with the dispatch of court business and increasing the operating expense, and which advocates that the sentencing power be located exclusively in the judge. Other than giving this quotation, the report itself does not take any stand on the subject or go into any discussion.

The New York (1927) report (pp. 69–70) recommends that in every charge the jury be emphatically told that the kind or degree of sentence is none of its affair and that, in determining the issue of guilt, the jury must not consider the punishment; but there is in this report no factual study of the effect of jury invasion into the disposition field nor any thorough inquiry as to how to get rid of this invasion. Mere telling the jury to stay out will certainly not accomplish the purpose. The National Crime Commission states that the jury should have no part in sentencing. But the problem is obviously more complicated than that; for the jury's consideration of the punishment factor is due to features of the substantive criminal law, of the code of procedure, and of the administrative organization which would be left untouched if nothing more be done than the almost empty gesture of telling the jury to forget all about the sentence. These little touches of advice in the surveys indicate some realization of the evil effects of the jury's meddling in the disposition of the offender; but they do not constitute even a beginning toward an analysis of the causes of or of the methods of elimination or reduction of the evil.

THE DEFENSE OF INSANITY

Logically involved in this problem of the function of the jury and its qualification for its function, and with very significant bearings upon the problems of disposition of the offender, is a much-discussed subject which is usually treated as though it were predominantly of a procedural nature, namely, the insanity defense.

The statistics in the surveys concerning the volume of the use of the insanity defense and the degree of successful use of that defense tend to show that, similarly to exaggeration of the volume of escapes through jury acquittals, popular impression greatly overrates the quantity of the use of insanity as a defense and the success of that defense as a mode of escape. Evidently, compared with many other and actually more influential features of the administration of criminal justice, the insanity defense has a news value which produces a distorted popular impression in this regard. Such statistics on this phase as are contained in the surveys tend to indicate a very small percentage of cases in which the defense is used, and, of these, a relatively small percentage in which it is used successfully.

The Illinois report (p. 213) states that the number of defendants found insane by juries in the various municipalities and counties covered by the survey vary from less than 1 per 1,000 cases to 1.5; and that "the insanity defense has great publicity in a few homicide cases and creates the impression that a large number escape in that way." On page 757 there are more detailed statistics of Cook County,

showing in four years a total of only 11 findings of insanity in murder cases and 40 in all cases. The author adds—

> This number would undoubtedly be much increased, however, if psychiatric examinations were made as a routine;

indicating his opinion that the number of insane accused exceeds the number found insane by present processes of administration; and, to confirm this, he states that examinations held in the prisons disclose more insanity than would seem to be the case if judged by the trial statistics. California recently passed a statute segregating the trial of the guilt issue from the trial of the insanity issue, thus affording the opportunity for statistical information as to the volume of acquittals attributable exclusively to the insanity issue, and page 37 of the report discloses that in 8,336 cases there were 98 pleas of insanity, or a little over 1 per cent, and that of these 98 only 13 were successful, and in a majority of these the district attorney either stipulated that the defendant was insane or the experts called by the State testified that the defendant was insane.

The surveys go into more or less detail by way of recommendations of reformed procedures which would eliminate the much-discussed evils of the present procedural system whereby insanity is made an issue of fact triable by a jury and by means of the usual litigious or contentious methods and with conflicting testimony of experts paid by the parties. As shown in the above-cited figures, the statistics regarding the use of the insanity plea do not indicate any pressing problem of mere procedural reform. There are many observations scattered here and there in the surveys which point toward the suspicion that the evil is deeper than one of trial procedure, and that it lies rather in the fundamental conceptions of our substantive law concerning the bearing of insanity on guilt and on the disposition of the offender. To avoid, therefore, an over-emphasis upon the importance of the purely procedural elements, this report will not devote as proportionately large a space to this part of the subject as is given thereto in many of the surveys, but will restrict itself to brief descriptions of some of the proposals.

For instance, New York (1928) (p. 283) proposes a complicated procedure whereby prosecution and defense each names one or two psychiatrists and the court chooses one from five nominees, and these together make up a board of examiners whose report is delivered to the court and, if unanimous, is not subject to rebuttal. The recommendation is not quite clear as to the exact issue which will be put to the experts. New York (1929) (p. 53) contains a later modification of the plan.

The Missouri survey (p. 371) proposes that the court name experts in addition to those of the parties, and that the report of these court experts be introduced in evidence, subject, of course, to examination by the parties, and that a verdict of not guilty on account of insanity be required as a form of special verdict to be followed by a civil lunacy proceeding where the special verdict is insanity.

The Missouri survey (p. 430) also recommends that if the accused plead insanity, he must submit to an examination by the department of mental diseases.

The California report's recommendations (p. 30), which has been embodied in a statute, requires insanity to be pleaded as a special defense and to be tried separately from the trial of the other features of the issue of guilt or innocence. In the trial of the insanity issue, there is an official mental examination, the report of which goes into the evidence. The National Crime Commission recommends that the court appoint three experts who, upon call of the court, are to take the stand and be subject to cross-examination; also a special finding. The National Crime Commission's committee on the medical aspects of crime recommends the general adoption of the Massachusetts system whereby, before trial takes place or is determined upon, an official State department makes a mental examination of the accused, report of which is submitted to the prosecutor and the court as bearing upon the question of whether the prosecution should proceed or the accused should be civilly disposed of. The Illinois report (p. 804 ff.) recommends that in capital cases experts be employed by State authority, who will make an examination as a routine matter before trial and

whose report would be subject to cross-examination, and that if the report show insanity, further prosecution should be suspended and the issue of insanity be tried by the jury, and, if the verdict be insanity, the case be treated as one for non-criminal disposition at the time. This Illinois report on page 752 enters into a discussion of whether the commission system; that is, a system whereby a commission of experts specially appointed by the court or the attorneys makes an examination, is likely to be satisfactory, and comes to the conclusion that it is not likely to be satisfactory.

It may be said to be evident, without going further into the details of the recommendations, that the surveys grope about considerably for some procedure which would tend to eliminate or reduce the evils arising from conflicting expert testimony paid for by the parties to the case and presented in the litigious and contentious manner of the lawsuit. There are hints, however, of a recognition that the evil lies deeper than can be reached by any such relatively procedural and mechanical provisions. The Illinois survey contains a splendid chapter by Dr. H. Douglas Singer on The Deranged or Defective Delinquent, with an introduction by John H. Wigmore, in which Doctor Singer himself is (p. 741) quoted approvingly in a quotation too long for full insertion here. This quotation indicates that our troubles to-day come from the fact that the law has in the past been concerned with making the punishment fit the crime instead of the criminal and, consequently, the law has evolved a definition of insanity which has no scientific validity whatever. The following excerpts from this long Singer quotation will bring out the point sufficiently for the purposes of this report:

> As a result of investigations of human behavior in health and disease physicians have been led to recognize that there are many forms of disordered or unusual behavior, other than that called insanity, which demand scientific study for their understanding and treatment. Among these come much of what is called crime. The more recently acquired knowledge in this field has not been absorbed by the law. One consequence is that the courts and the psychiatrist in some respects talk a different language. * * * To the psychiatrist the term insanity has come to mean only the legal or social aspects of a mental disease. He no longer uses the term in a medical sense. In medical parlance the statement that a person is insane means that the disease of his mind is such that he is in need of commitment. * * * It may be conceded at once that the criminal law has been evolved to deal with the type of behavior that is called crime, regardless of the views of physicians as to causes and treatment. That it has not been completely successful is obvious. * * * The distinction that is made between an act that shall be called crime and one (possibly exactly similar in kind) that results from disease in that the former is *wilful* misbehavior, outcome of *an abandoned and malignant* heart, whereas the latter is *not chosen* because it is the result of disease. This distinction is expressed in the legal concept of *responsibility*, a concept that has no counterpart in medicine. An insane man is said by the law to be not responsible because his conduct is controlled by disease; a sane man is responsible because he chooses to act in the way he does. The physician does not concern himself with such abstractions—his concern lies in trying to determine why the man committed the act and how to remedy it. He wonders why the courts do not think in the same way and cease to worry about free will and responsibility. * * * From a practical point of view, does it make any real difference whether we label a man responsible or irresponsible? Would it be not equally pragmatic to hold everyone responsible for his acts, whether sane or insane, and then to adopt measures which will: (1) Insure society against further criminal acts on the part of this person; (2) establish clearly that society can not, for its own protection, tolerate such acts regardless of the reasons back of them, and (3) rehabilitate the offender if that is possible? These purposes are all that are hoped for from punishment; the introduction of the mythical concept of responsibility merely clouds the issue.
>
> Thus, from the psychiatrist's point of view the question is not one of abolishing responsibility, but of ignoring it, and of planning treatment to fit the offender rather than his offense.

In Doctor Singer's own portion of this chapter of the Illinois survey, he discusses and elaborates these ideas, pointing out the confusions which are present in our definition of crime and of insanity as a defense, and demonstrating that the evils of the conflicting experts paid by the parties and presented in the contentious and litigious manner of the lawsuit lie not so much in the mode of this procedure as in the deeper fact that, as aforesaid, the lawyer and psychiatrist are speaking different languages and fundamentally the

legal concept of insanity and its present relationship to disposition have no scientific validity in the modern sciences of psychiatry and human behavior. Though, therefore, the surveys did not, particularly in those parts written by lawyers, searchingly face this problem of harmonizing the definitions of crime and the methods of criminal procedure and administration with the conclusions of modern psychiatric science, it is quite evident, from the inclusion in these surveys of such chapters as that of Doctor Singer's, from similar chapters in other surveys and from many scattered remarks here and there, that the fundamental fallacy may and probably does lie in treating the mental element, that is, the element of the mentality or mental condition of the accused, as a factor in the question of guilt instead of as a factor bearing upon and relevant to the sentence or disposition.

In the chapter of the Illinois survey (p. 138) on the Supreme Court In Felony Cases, the author ridicules the treatment of the insanity defense as an issue to be tried in a litigious manner, and the same report on page 739 contains quotations from Dr. William A. White which point out the folly of the crime and punishment conception as compared with the offender and treatment conception. Indeed, this Illinois survey (p. 809) boldly concludes—

> Questions of responsibility, mental or otherwise, should play no part in the determination of guilt. The sole question put to a jury should be, "Did this person commit the offense with which he is charged?"

We see, therefore, that the analysis of the problems of the insanity defense, so often approached in parts of the surveys as though predominantly problems of trial procedure, and led up to in this report as though belonging primarily to the field of the organization of that part of the administration which is concerned with the trial of the accused on the guilt issue, opens up and leads to the question whether the mentality of the offender should not be treated as bearing on disposition rather than on guilt.

THE USE OF DATA CONCERNING THE OFFENDER (AS DISTINGUISHED FROM THE OFFENSE) IN SENTENCING AND DISPOSING

Proceeding now to the stages or parts of the administration which have to do with the disposition, as distinguished from the trial, of the offender:

The growing recognition of a basic distinction, both in type and in application, between facts relevant to the crime and facts relevant to the criminal, appears in the surveys from the frequency and quantity of discussion and findings and recommendations relating to the use by the courts, in determining the disposition of the offender, of data concerning the offender as distinguished from the evidence concerning the offense. In practically every survey there is a recommendation, more or less detailed and more or less discussed, to the effect that, before granting probation or sentencing or other form of disposition, the court obtain and take into consideration the facts concerning the individual and social history of the offender, his personality, his mental and moral characteristics.

The New York (1927) report (p. 68) recommends that, at the time of sentence, the court have before it the history of the defendant's criminal record. This particular recommendation seems to emphasize only the previous criminal record as the type of data required for intelligent disposition. On page 184 this recommendation is repeated, but added thereto is the recommendation that the court have before it any report that may have been made as the result of mental, psychiatric or physical examination of the defendant, and that the court should be at liberty to seek and ascertain any information which will be of assistance in determining the treatment to be administered to the defendant. On page 272 there is further development of the same thought, going so far as to point out that the facts bearing on disposition are of a nature to require the services of trained investigators who know how to look for and can understand the facts relating to the personality and indi-

vidual and social history of the offender, and the report at this point contains the italicized statement—

> The conclusion seems warranted that on right investigation depends right sentencing in important cases, and on right sentencing depends the effectiveness of the whole process of criminal prosecution itself.

The 1928 New York report (p. 315 ff.), in the portion devoted to the findings from individual studies made of the careers of 145 offenders, includes a finding to the effect that "except in a limited number of courts, no adequate machinery was provided for obtaining social histories of the offenders and criminal records were seldom if ever checked or verified." And, in the recommendations drawn from these findings, the report states:

> No court dealing with adult offenders has attached to it a department of psychiatry. The number of offenders studied who are feeble-minded or psychopathic indicates the need for having attached to the courts physicians and psychiatrists to make physical and mental examinations.

In 1929 New York (p. 162 ff.), the subcommission on adjustment of sentences again emphasizes the necessity of data concerning the offender before sentence is determined or suspended.

Illinois (p. 771) states that a questionnaire sent to the members of the Chicago Neurological Society divulged that over 90 per cent of the answers regarded the prime purpose of a psychiatric examination as the determination of the treatment to be applied to or the disposition to be made of the accused if and when convicted. In a more generalized and less specific way, the National Crime Commission's committee on medical aspects of crime recommends that dispositions be based on psychiatric reports. In its 1929 meeting, the American Bar Association adopted a report of its section on criminal law and criminology which, amongst other things, recomended "that there be available to every criminal and juvenile court a psychiatric service to assist the court in the disposition of offenders, and that no criminal be sentenced for any felony in any case in which

the judge has any discretion as to the sentence until there is filed as a part of the record a psychiatric report."

The Missouri survey (p. 453) points out that many a man is treated as a first offender who would not be so treated if the disposing authorities had knowledge of his whole career, and recommends that (p. 484)—

> Circuit and juvenile court judges should submit full information regarding each person's criminal record, his family history, early influences that bear on his delinquency, and the individual's response to probation efforts. Such information should be made a part of the commitment record.

This survey did not indicate just how the judge is to obtain all this information, nor what bearing it should have on the original disposition by the court, as distinguished from the later dispositions by the parole authorities.

The Cleveland report on courts (p. 331) recommends that each probation department obtain information bearing on the appropriate sentence and treatment of the offender and be the advisor of the court as to disposition upon conviction.

The California report urges that grant of probation be based upon a report to the court on the history and characteristics of the offender.

The Minnesota crime commission (pp. 44–49, 61) seems to consider the court as a body which needs protection against overleniency by receiving information about the offender's career before granting any lenient type of disposition such as probation; and recommends that, before any suspension of sentence or probation be granted, the judge shall have a report of the record, history, and other pertinent facts concerning the convicted person.

DIFFERENTIATING PROCEDURE ON THE SENTENCING ISSUE AND ON THE GUILT ISSUE

The surveys, therefore, show a distinct trend toward emphasizing a differentation between the type of facts or data which bear upon the sentencing or disposition issue and the type which is relevant to the guilt issue. A segregation of the trials of those two issues must always take place to some extent, since the sentencing issue can not arise

properly until guilt has been established. None of the surveys, however, discusses with anything like thoroughness the nature of the procedure which should govern the presentation and hearing of the disposition problem; and there is very inadequate discussion of the appropriate organization of the administration for the ascertainment, presentation, and application of the facts relevant to disposition. What shall be the method of ascertainment and presentation of the evidence relating to the offender; what part shall the prosecuting attorney perform in the hearing on disposition; what part the accused and his counsel and witnesses; these and other administrative and procedural questions relating to the disposition, hearing and decision were not discussed to any degree in the surveys and still remain to be studied, formulated, and developed.

The Illinois survey (p. 809) under a subtitle "Radical Reorganization of System," contains the significant recommendation:

> Conviction should automatically carry with it an indeterminate sentence of which the maximum is life imprisonment—

after which

> Every person convicted should be studied psychiatrically and medically to determine:
> (*a*) What treatment is needed to rehabilitate this person if it is possible?
> (*b*) Where can this treatment be administered with prime regard to protection of society?

and that probation should be determined by "a judicial board" after a study and examination of the convicted offender.

The Minnesota crime commission (pp. 44–49, 61) declares the board of parole, rather than the court, to be the actual sentencing tribunal, and affirms that the correct measure of punishment can be more intelligently fixed after the convicted person shall have been in a penal institution than at the time of the conviction; and that, therefore, the board of parole should ascertain and apply all the information concerning the offender which might be pertinent to the determination of the term of punishment and mode of treatment, including data of a psychiatric nature.

PROBATION AND PAROLE AS FORMS OF DISPOSITION OR TREATMENT

While often thought of as merely a form of leniency, still, as it involves the imposing of conditions upon freedom of conduct, probation should be conceived of as a form of punishment, treatment, or disposition. Here and there in the reports there are hints or suggestions on the problem of the structural organization of the probation work, its relationship to the courts, its relationship to parole or welfare departments or other parts of the administration. None of the surveys, however, sought to make a thorough inquiry into this problem of the place of probation in the structural organization of the administration of criminal justice. The recommendations bearing on this subject indicate a distinct trend toward the conception of probation as a mode of treatment, based on detailed and thorough information concerning the history and nature of the offender, as distinguished from a form of leniency or reduction or mitigation of a sentence based on the circumstances of the crime. This point of view naturally raises the question whether, structually, the determination or, at least, the administration of probation belongs in an executive rather than a judicial branch of the administration of criminal justice.

Parole raises an analogous question of structural organization. Considerations determining parole are similar to those determining probation, and there is a similarity in the modes, methods, and purposes of supervision. The surveys do contain some hints as to this close relationship, but without attempting to search thoroughly into its implications.

The type of data bearing on these various dispositions of the offender from the time of conviction to the time of final release are of a somewhat similar nature, and some of the surveys indicate a realization that the gathering and distribution of such information may be a function which can be best performed by some State centralized

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agency. Places in the surveys where these trends of thought are indicated will now be cited.

The report of the subcommission on adjustment of sentences, entitled "A Study of the Administration of Probation" in New York (1927) (p. 254 ff.), raises the question whether probation is a judicial function. The committee does not come to a clear answer on that question, but emphasizes the administrative nature of probation; traces the history of probation organization in New York State; refers to the excessive decentralization due to making each county a separate unit; mentions the creation of a State probation commission to overcome this; points out that when each judge or group of judges establishes his or its own probation department, with such number and qualifications of probation officers and such equipment as the judgment of the individual judge or group might dictate, the result is a hodge podge; that the probation staffs or units, controlled by the diversified ideas and policies of the different judges or courts throughout the State, can not constitute an efficient system, and that this condition can not be cured by a State probation commission which has at the most only investigatory and advisory powers. The said New York report proceeds to state that a legislative commission as early as 1905 had criticized the existing organization as productive of as many systems of probation as there are different local courts using the probation law. These points would lead logically to a centralized State organization of probation, as distinguished from a system in which the probation staffs are attached to the various courts. The New York Crime Commission in its 1928 report (pp. 13 and 255 ff.) definitely adopts the recommendation of centralized State supervision of probation. In order not to take too big a step at a time, the commission accepted, for the time being, the retention of appointment of probation staffs by the local courts. While expressing itself with some hesitations, the commission was ready to go so far as to assert that a probation officer should not be simply a confidential attendant or investigator for the judge to whose court he may report, and that the local

probation officers should work under the central supervision of a State department.

This New York report contains some hints of a differentiation between the determination that probation shall be granted, a function which is judicial in its nature, and the carrying out or administration of probation, which function is rather executive or administrative in its nature. None of the surveys can be said to enter into any thorough analysis or discussion of this differentiation.

The 1930 Report of the Crime Commission of Michigan (p. 38) recommended a State probation commissioner and director to exercise supervision over the administration of adult probation throughout the State.

The Illinois report (p. 451) gives to the courts the hint that they should take cognizance of the marked lack of uniformity in the application of the probation laws in the various parts of the State, and that, through conference and study, an effort be made to evolve common standards; and then goes on to say that—

> In order to unify and standardize the work of probation administration, we recommend that the supervision of persons on probation be placed by law, along with the supervision of persons on parole, under a central State agency.

Like the New York report, this seems to be based on a realization that a change from the conception of probation as a mode of leniency by the sentencing judge to a mode of treatment by the treatment authorities represents the correct direction of reform, but one that can not be put into effect suddenly.

The Minnesota commission (pp. 43, 58) did not share the New York commission's hesitations about reducing the province of the judges, and is decisive in its conclusion that sentencing, probation, parole, and pardon are all forms of disposition or treatment which involve similar considerations and the determination and execution of which should therefore be in a centralized agency. It clearly recommends a State probation officer who shall advise with the judges and keep records of all probationers and whose consent shall be necessary to the appointment of all probation staffs and who shall have an active superintendence of all probation

officers and instruct them in their duties and shall have the power to impose duties upon them. This is obviously a transitional recommendation, that is, transitional from probation conceived as a part of the court system to probation conceived as a part of the State treatment system. On page 60 the statement is made—

> Probation, sentencing, paroling, and pardoning all involve the same considerations. The study and administration of all of them should be correlated. The several agencies which determine or remit punishments, to each of which the criminal may appeal in turn, should have one general supervision.

This Minnesota report, however, does not search into the question of whether the function of determining upon these dispositions and specifying the conditions thereof be not so judicial in nature that its place be properly in a judicial as distinguished from an executive branch, leaving the carry-out or administration to the executive organ.

On this question of the structural organization of probation, the surveys, therefore, leave matters in a rather tentative and inconclusive condition, while unmistakably pointing toward centralized State administration and supervision as the proper direction, and also giving inklings of the thought that the grant of probation and other forms of disposition may not be a judicial function at all, in the traditional sense of "judicial," or at least may be a function of quite a different nature from those for which the regular law courts are equipped and qualified.

SUBSTANTIVE CRIMINAL LAW

The surveys contain numerous suggestions for new substantive laws, representing cures of specific abuses or defects that have developed, and most of them of rather local significance or applicability. None of the surveys attempts any critical study of the existing substantive criminal law as a whole; and such a critical examination of the substantive criminal law, in the light of the more modern knowledge concerning human behavior and more modern concepts of the ends of criminal justice, still remains to be done. The substantive law of crimes is, like the administration and the procedure, not a whole organism in and of itself and operating in a vacuum, but a part of a whole; and unsatisfactory results are bound to accrue if the basic principles of the substantive law do not fit the basic principles upon which the criminal justice system is administratively organized or the basic principles of the procedure with which that law is enforced. Some of the contemporary confusions are the result of an attempt to apply individualization of disposition under a system of substantive law based on the classical concept of a schedule of punishments.

The critical examination of the substantive law of crimes is therefore one of the tasks still to be done, but only after there shall have been a formulation of the basic principles of the purposes and methods of criminal justice.

RELATIVE MINOR IMPORTANCE OF PROBLEMS OF TRIAL PROCEDURE AND MAJOR IMPORTANCE OF ADMINISTRATION

This report has now presented some statistical material from the surveys and a few typical case histories of criminal careers, together with mention of the problems, lessons or indications disclosed on the face of these statistics and histories; also descriptions of or references to some of the outstanding features, trends and problems of the different parts, organs or stages of the administration from arrest to disposition. Proceeding from this description of conditions in the different specific functional parts of the law-enforcing apparatus (such as courts, prosecutors, bail, etc.), this report will now seek to describe certain more general characteristics of the administration of criminal justice in this country as disclosed in the surveys and to point out some of the generalized or synthesized conclusions which may be drawn and the general directions of progress.

The trial, that is, the trial of the issue of guilt or innocence, particularly if it be a jury trial, affords the newsiest item in the field of criminal justice. When the jury trial of a headline case results in an acquittal, the public, having been whipped into an excitement by following the dramatic

events of the trial, becomes inclined to exaggerate the prevalence of jury acquittal as the means by which offenders escape punishment. "Another thing we can't understand," says a columnist in one of our comic weeklies, "is how the prisons can be so crowded when you so seldom hear of the courts convicting anybody." Lawyers, naturally, take more interest in problems of trial procedure than in the other parts of the field of criminal justice with which they have less contacts or which fall to a greater degree outside of their professional knowledge and experience. This relatively greater public interest in jury trials and this relatively greater professional interest in matters of trial procedure have produced the development that public discussion, as reflected in newspapers and other reading matter of the general public, and professional discussion, as reflected in reports of bar associations and other lawyer groups, dwell most upon the so-called technicalities of trial procedure as the offender's road of escape from punishment; and press, public, and bar cry aloud for reforms in trial procedure as the great panacea. The same emphasis appears here and there in the surveys, and some of them contain numerous recommendations for specific reforms in trial procedure.

We have seen, however, in the analysis of the statistics contained in the surveys, including those very surveys which devote much space, time and effort to these procedural details, how relatively small a percentage of escapes from conviction are effected through acquittals by juries and, indeed, how relatively small a percentage of the felony cases ever reach trial. This relatively minor power of the jury trial as a determinant of the disposition of the offender has not gone entirely unnoticed or unnoted in the surveys. The New York Commission's 1928 report has a subdivision entitled "The Decline of the Jury in Criminal Cases," and on page 52 says—

> It is, however, very important to consider that the petit jury as an element in the trial of criminal cases is becoming less and less important. The wide variety of means through which cases are disposed of other than through a trial by jury may mean that the part played by the jury is becoming less and less important. To test this proposition and to determine whether the overwhelming tendency toward pleas of guilty is a recent or long standing characteristic of New York practice, we have assembled for this report certain additional data.

The report thereupon proceeds to set up comparative statistics of New York, Cleveland, St. Louis, Hennepin County, Minn., and Fulton County (Atlanta), Ga., all indicating the large percentage of pleas of guilt in representative cities and urban counties. To test whether this tendency is an increasing one, the New York Commission collected and tabulated New York statistics from 1839 to 1926 and concluded (p. 53)—

> This demonstrates rather conclusively that the substitution of conviction after pleas of guilty for jury trials has proceeded progressively for generations. It is due to causes that are more fundamental than the policies of individual district attorneys. Such causes we make no attempt in this report to analyze. The function of statistics is to point to significant tendencies. Here they point to a steady decline in the use of the jury over a long period of time—a tendency which points to a time when the jury will be used only in the most unusual cases.

The Oregon report, analyzing the disposition of felony cases in Multnomah, its most populous, county (Portland), for the years 1927 and 1928, states that "the petit jury played an insignificant part."

The following passage occurs on pages 155–156 in the Virginia survey:

> A relatively small percentage of criminal cases is now determined by the ancient trial by jury. We like to think that we still have trial by jury, and sometimes we still do, but if we think that the usual, the routine, the ordinary criminal case, is now decided by the open, dignified, historic trial by a court and jury, we are simply deceiving ourselves. The usual case is now decided, not by the court, but by the commonwealth's attorney. The commonwealth's attorney * * * is now the keystone of the criminal court, and not the judge * * *. Administrative justice refers to those dispositions of criminal cases other than by trial. In Virginia in 1917, 54 per cent of the nonliquor felony charges were disposed of in administrative ways; in 1922, 64 per cent; in 1927, 68 per cent. If we knowingly and intentionally desire administrative justice instead of the court trial, well and good; but if we foolishly believe we are getting court trials when we are, in fact, receiving administrative

justice, that is quite another thing. Possibly it is like entering a drug store and ordering quinine but receiving calomel. The calomel may be the better drug for us, but we ordered quinine; we paid for quinine, and we ought to get quinine. To carry the simile one step further, the druggist (who is the prosecuting attorney) may realize in a hazy sort of way that calomel is not exactly what we ordered (probably he is too busy to worry much about it), but he consoles himself with the thought that either drug will probably do us some good and besides the calomel (administrative justice) is already made up and is easy to put in a box while the quinine must be dispensed. Wittingly or not, the druggist of late years has certainly been disposing of many a dose of administrative justice.

This is a picturesque way of stating the fact of the relatively minor part played by the jury trial. Its tone seems to imply that the fact is to be deplored as a change from better to worse and is to be attributed to something in the nature of a usurpation by the prosecuting attorney. There may be fallacies lurking in these implications. There is a reason for everything; but the whys and wherefores of this development can not be thoroughly explored by the simple process of locating the agency which does most of the disposing of cases and then attributing full and exclusive responsibility to that agency. Some agency has to perform the function of sifting out the cases which justify trial upon the offense charged, and if the methods applied in police, preliminary examination, and other stages of the cases preceding the prosecutor's jurisdiction dump into his arms more cases than are warranted by or numerous charges in excess of the provable facts, then, when the prosecutor nolles many cases or accepts many pleas of lesser offense, he may be stepping into a breach into which somebody must step and for which he may be better fitted than any other existing functioning agency. Nor should we leave out of account the subtle and profound reflex effects of the theories or principles upon which the dispositions or punishments of offenders are to be based. The kind or the methods of the agency through which cases are to receive prompt and accurate labeling as a preliminary to disposition of the offender (guilty or not guilty, guilty of burglary or of larceny) might, on analysis, be quite different according to whether the disposition is to be based mainly on the facts of

the crime or on knowledge concerning the offender. For instance, if the disposition of the offender is to take into account his whole history and personality, a plea of guilt of larceny might quite adequately place him within the jurisdiction of the disposing tribunal; whereas, if the penalty is to be more or less mathematically based on the exact legal definition of the act committed by the accused, the careful jury trial might well be deemed a preferable mode for selecting the persons who are to be subjected to punishment or treatment. It is hardly possible to determine the degree to which what the Virginia survey calls administrative justice is good or bad, without having some theory as to the penal principles which the community desires to apply to those who are found or plead guilty. At any rate, whatever the causes and whether for good or ill, the fact is that a relatively small percentage of the cases are determined by trial by jury.

In this connection it is interesting to note that the subcommission on pardons, probation, etc., of the National Crime Commission, on page 33 of its report, contends that the evasion of jury service by the better elements of the community, about which so much is said in discussions of trial by jury, is due to the community's realization of the decline in the vitality or importance of the function performed by trial by jury.

The Missouri survey (p. 350) speaking of the causes of the large percentage of prosecutions which do not result in convictions states—

> But the principal defect, at least in the work of actual prosecution, that makes for an inefficient administration of justice, is our cumbersome, archaic, and inefficient system of criminal procedure with the glorification of technicality and formalism which it fosters and maintains.

This is splendidly stated; but it is not proven. None of the statistical or descriptive data contained in that survey proves or supports this assertion, and, indeed, the survey contains much material that points logically to different conclusions and teems with information which contradicts any such attempt to concentrate responsibility upon "pro-

cedure." While the Missouri statistics show a rather large percentage of acquittals as compared with convictions, they, like those of other parts of the country, show the acquittals to form a small percentage of escapes as compared with other modes of escape. And when one examines the specific reforms advocated in this Missouri chapter on Necessary Changes in Criminal Procedure, the wonder arises as to what can be properly called a "technicality" or "formalism." Is the definition of presumption of innocence a technicality or something very fundamental to our whole system of criminal justice? Is the requirement of a unanimous verdict a formalism or a very deep ingredient of our present system? Is the right of the defendant to stay off the stand without subjecting himself to unfavorable judicial comment a technicality or something which involves very deep-rooted problems and traditions of justice and its administration? Indeed, when one examines the recommendations of this chapter in the Missouri report, he finds very few of them that relate to technicalities or formalities as distinguished from matters of great depth and substance, and indeed doubts whether many of them can be called matters of procedure. Are the constitutional privileges and immunities of the accused matters of "procedure"?

The report of the Minnesota Crime Commission (p. 29) makes some recommendations of reform in trial procedure, but without any attempt to present facts leading to a demonstration either of the need of these reforms or that they would remedy specific defects to which the actual results of the cases could be attributed.

The shrewd report in the Illinois survey on The Prosecutor (in Chicago) in Felony Cases, by John J. Healy, himself an experienced prosecutor, after discussing some changes in the procedural code, proceeded to express the belief that these so-called procedural defects have a very small influence on the results of trials. On page 286, the author says—

> It is, of course, impossible, within the limits of this report, to discuss all of the defects to be found in the criminal code. The point is, the defects in the system furnish the smallest reason for the breakdown of criminal justice. Honest and efficient prosecutions are bound to overcome any mere defects in the procedural system. We must look elsewhere for our failures.

Those parts of the Illinois survey which deal with Chicago show considerable indication of a purpose to blame the then district attorney for the condition of affairs. The above quotation from Mr. Healy occurs in connection with an attempt to concentrate responsibility upon this one official. The Illinois survey teems with evidence that no such unification or concentration of blame has any scientific validity. But the statement in the above quotation is no doubt correct.

Some of the popular and professional beliefs concerning the size of the part played by "technicalities" in producing acquittals are derived from impressions concerning the frequency of appeals to higher courts and of reversals by those courts on highly technical points. Here again the actual facts as disclosed by the surveys do not verify these impressions. The Illinois survey contains a chapter on The Supreme Court in Felony Cases. On pages 115 ff. are statistical summaries of the rulings of the Supreme Court of that State classified as to number and grounds of reversals. These statistics show that 59 per cent of the appealed convictions were affirmed, and, when we look for the statistics classified in accordance with the types of crime, we find that the affirmances tended to increase and the reversals decrease as the gravity of the crime increases. For instance, 79 per cent of the robbery cases were affirmed. Liquor cases, rather than homicide, robbery, burglary, larceny, and the like, accounted for most of the reversals. When we examine the grounds of reversal in those cases which were reversed, as contained on pages 117 ff. of the report, we find remarkably few reversals upon the constitutional privileges or technical points of procedure about which most of the public and professional discussions have taken place. For instance, the analysis of the principal grounds for the reversal of cases in Illinois in the 10 years from 1917 to 1927 shows an aggregate of only 2.8 per cent turning on violations of constitutional provisions, whereas 17.2 per cent turned on the inadequacy of the evidence. When we examine those same statistics classified as to types

of crimes, we find that in all the homicide, burglary, and robbery cases there was not one reversal in all those 10 years on a question of constitutional privilege or on a purely procedural point. It is true that about 20 per cent of the reversals were for erroneous instructions to juries and about 20 per cent for errors in the admission or exclusion of evidence, and no doubt the grounds of some of these reversals might have been of the unimportant or flimsy nature which critics would call "technical"; but if, in general, errors of law in the charge to the jury or errors in rulings on evidence be termed "technicalities," then there remains no meaning in words. Indeed, the author of this chapter in the Illinois report, Prof. Albert J. Harno, expressly admits that the statistics and analyses of the supreme court cases fail to demonstrate any great influence of so-called technicalities or constitutional privileges on the production of reversals of convictions; and he proceeds with his very able case by case analysis of the decisions of the supreme court in felony cases, finding justification for this severe labor in the thought, that the decisions of the highest court, however few, have important effects upon the manner of the conduct of trials by the trial courts. He gives an analysis of every criminal appeal case in that court, and these analyses show that practically none of the cases which turned on these constitutional and technical questions were cases of homicide, robbery, burglary, or the other crimes of violence which are causing so much concern.

The Missouri survey also contains an analysis of the decisions of the Supreme Court of that State through a period of 10 years. In the 10 years that court passed on only 745 criminal appeal cases of which 420 were affirmed, 279 reversed and remanded, and 46 reversed outright, showing something over 56.37 per cent affirmances and 43.62 per cent reversals. These general statistics were classified both as to types of crime and grounds of reversal, and, as in Illinois, show a greater percentage of affirmances in the major crimes than in the lesser ones, as, for instance, 57 per cent affirmances in murder, 73 per cent affirmances in robbery. In these 10 years (1915–1924) there were in all only 10 reversals for violation of constitutional privileges, an average of one a year. The report acknowledges an increasing tendency to cut through technicalities and decide cases on the substance of the evidence.

The New York (1927) report finds satisfaction in "the comparatively slight number of reversals in criminal cases on technical grounds"; and notes that in a period of 35 years, the reversals in capital cases represented only 14 per cent of all reversals, and that in New York County there was not a single reversal in a capital case in the period 1916 to 1922.

The Cleveland report (p. 318) containing the statistics on the results of appealed cases, shows that of the 39 cases taken to the appellate court, 25 were affirmed, 6 of the appeals were dismissed, and only 7 convictions reversed; that less than three-tenths of 1 per cent of the cases which entered the trial court were appealed, and that the reversals represent only 2.4 per cent of the convictions after trial, and that practically all of the reversals were on the weight of the evidence and, therefore, practically none of them on what might be called procedural technicalities.

English and American statistics concerning the number of cases appealed and the results of appeal are not exactly comparable. The English court of criminal appeal, for instance, has jurisdiction to reduce a sentence as well as reverse a conviction, whereas American appellate tribunals do not have this power except by the indirect method of reversing a conviction on the ground of excessive sentence. There are other differences which make it impossible to set forth exact comparisons. The statistics plainly, however, do not support the popular impression that appeals in criminal cases in the United States are more frequent and result in reversals to a substantially greater degree than in England. Comparative tables for Massachusetts and England have been set up and may be used for purposes of illustration. Taking the Massachusetts figures for 1926, there were 1,452 felony convictions, of which 71 or 4.89 per cent were appealed, of which appeals only 9 were successful, representing 12.68 per cent of the appeals and only

0.62 per cent of the convictions; whereas in England in the same year 1926, out of 6,350 convictions 463 were appealed, representing 6.31 per cent of the convictions, of which appeals 50 were successful, representing 12.47 per cent of the appeals and 0.77 per cent of the convictions. Of the 50 English cases, however, 27 resulted in alteration of sentences and 23 in complete reversal of convictions.

We see, therefore, that the statistical facts obtained in and for the surveys indicate the jury to be a relatively minor agent in the production of escapes from punishment and that the constitutional privileges of the accused and the procedural technicalities have a relatively minor influence upon the general results of criminal prosecutions. Here, therefore, we have an aspect of criminal justice in which there has been a misplacing of popular and professional emphasis. For that reason, this report will refrain from presenting or describing in detail the recommendations contained in the surveys on the subject of these privileges and technicalities, except in so far as matters treated in the surveys as procedural have been conceived in this report as involved in some problem of administration. The detailed procedural recommendations of the surveys deal with such well-known suggestions as the removal of the prohibition of comment upon the failure of the accused to take the stand, equalization of the number of peremptory challenges allowed the prosecution and defense, joint trials on joint indictments, simplification of forms of indictment and ease of amendment of indictments, permitting a verdict in noncapital cases by less than a unanimous vote of the jury, and others.

Procedure and administration are necessarily so interrelated and intertwined that definitions of the two terms are bound to overlap and have twilight zones. For instance, the personnel and competence of the jury is affected by the equipment, organization and working methods of the jury commissioners who put the names in the jury wheel and otherwise participate in the process of impaneling; and equipment, organization, and working methods are matters of administration. The personnel and competence of the same jury are also affected by the competence and

working principles and practices of the judge who passes upon the requests for exemption and the challenges; and these also fall fairly within the concept administration. The personnel and competence of that same jury are also affected, however, by the process of challenging by prosecution or defense, and the rules governing that process are usually thought of as procedural and form part of the statutory codes of procedure. It might be difficult to attain acceptable boundary lines between what is administration and what is procedure. In a general way administration includes the structural organization of the law-enforcing instrumentalities, their jurisdictional distribution of function, and their interrelationships; also the personnel and the qualifications, training, and methods of selection of personnel; also the equipment furnished these instrumentalities, and the working systems, methods, and principles of these instrumentalities. In general procedure may be described as the detailed legal rules governing the application of the criminal law by these instrumentalities to individuals charged with crime, particularly in and before courts.

Obviously not only do these fields overlap, but they are so closely interrelated that every change in the one affects the operation and usually requires an adjusting change in the other. Indeed, on analysis, the disappointing results of procedural changes will often be found due to the failure to realize the importance of equipping the administrative agencies to apply the procedural changes efficiently. Indeed, moreover, stable and effective changes in procedure can not be intelligently prepared without previously or contemporaneously determining or having rather definite views upon the problems of the organization, equipment, methods, and principles of administration, or without adjusting procedure and administration with each other and both with basic concepts of method and purpose. As an illustration of the problem, we could take section 409 of the American Law Institute's Code of Criminal Procedure dealing with sentencing procedure. That section is frankly based on the concept of sentencing as a process of imposing a penalty,

with mitigation or aggravation based on an inquiry into mitigating or aggravating circumstances, which inquiry is to be conducted substantally as a contest in open court between prosecution and defense. "Mitigation" and "aggravation" are words which imply purely moral judgments. Consistently with this basic assumption, the proposed section ignores any consideration of a diagnostic or investigational sort of procedure to ascertain the whole problem presented by the convicted person as a basis for a disposition or treatment designed to make him a less dangerous or antisocial individual; and the Institute's proposed provision would not harmonize with any such procedure or aim; and were judges, while acting under the proposed section, to apply any such procedure or aim, confusions and maladjustments would be apt to result.

The facts developed in the surveys indicate that our pressing and urgent problems are not predominantly those of procedure, in the technical sense of that term, but rather those of administration. Good organization, equipment, methods and principles of administration on the part of police, prosecution and courts would largely nullify the power of so-called "technicalities" to do harm. The ability and qualifications of police, prosecution and judiciary, the structural organization of these departments, the coordinations between them, their working methods and principles, their equipment, the careful definition of their functions and jurisdictional provinces: These and similar matters of administration are those upon which the attention and emphasis need to be placed.

The importance of administration is well stated by Dean Pound in his Cleveland summary (p. 561):

> The administrative element in justice, the work of adjusting the application of law to individual cases with an eye to their unique features, becomes increasingly important as we become more crowded and division of labor becomes more minute, and individual wants and desires and claims come in contact or conflict at more points. In this administrative element of justice men count for more than machinery. And yet even here men must work with machinery. The output is a joint product of men and of machine, and it often happens that what the man does is dictated by the capacity or the exigencies of the machine quite as much as that what the machine does is dictated by the will of the man.

The Illinois survey (p. 330) finds that the outstanding defects and weaknesses in prosecution are administrative.

OVER-COMPLEXITY AND MALADJUSTMENT OF THE SYSTEM AS A WHOLE

It is rather difficult to reduce into a few generalizations a description of the tremendously complex apparatus which the present system of administration of justice supplies, the inefficiencies resulting from this complexity and the maladjustments of its various parts. A few such generalizations, however, may help to point toward the necessary direction of reform. Keeping in mind the reservations to which generalizations in complex matters are always subject, it may be stated that the present system suffers from three general types of complicating factors and maladjustments, namely: First, that the whole process of detecting, prosecuting, trying, and adjudging violations of law and disposing of the offender is broken up into too many parts and amongst too many organs or instrumentalities, involving an excessive number of steps and stages, with the inevitable dissipation of responsibility and maladjustments; second, that the administration of criminal justice is broken up into what have become illogical geographical divisions, so that the administration is weakened in dealing with problems whose geographical units do not correspond to those of society's organs for solving them; and thirdly, that the administration has an inner disharmony in that different parts of it or the methods used or principles applied by different parts of it are based upon different and, in many respects, contradictory concepts as to the causes of crime and the way to deal with crime.

Concerning the inefficiency of the apparatus as a whole, the Illinois survey (p. 295) states:

> This enormous loss of motion in criminal cases is the first salient fact in the administration of justice. In calling attention to it we are at this point making no charges of corruption or inefficiency

against the individual ranks of those who operate the machinery which society has created to protect itself. We are considering the thing in the mass. If any charge is to be made upon the basis of the facts which we have presented in the foregoing paragraphs, it is simply this, that society has a curiously ineffective way of protecting itself.

See also Cleveland report on courts (p. 234 ff.), which pictures in text and by diagram the excessive number of steps in a criminal prosecution and the excessive number of processes or devices by which prosecutions are pursued or dropped.

What might be called the regional problem, that is, the problem growing out of the fact that the parts of the administration have geographical break-ups or boundaries unadjusted to what may be called the geographical units of detection, prosecution or crime, is stated or hinted at in many parts of the surveys. Concerning this, as well as the division of the administration into numerous uncoordinated parts, the Minnesota report, after describing organized crime, says (p. 14):

The State, in its attempt to deal with crime, presents a curious contrast to this picture of organized efficiency. We have practically no provision for centralized effort. Each local unit of our Government acts for itself. Each county has its sheriff, county attorney, etc. Each municipality maintains its separate police. State-wide organization, where it exists, is either casual or voluntary. Judges of the district court and county attorneys meet annually, but for a brief session and with very limited purposes. Such cooperation as there is among sheriffs and among police units is voluntary. There is no head to any of these groups of officials, no agency for coordination of their work. Furthermore, even in a single locality, there is no provision for cooperation among the officials concerned with crime. Sheriff, police, county attorney, and judge may work together—or they may not. Nothing in the law compels them to cooperate. They owe responsibility to no common chief, except the rather vague one to the public. It is apparent from our investigations that frequently there is a lack of effective cooperation of the several agencies dealing with a single case. There is an unfortunate tendency for each agency to work in a water-tight compartment, because of failure of each to understand and to cooperate with the others. A further result is that each agency tends to exercise some of the functions properly pertaining to another.

The Illinois survey (p. 1099) points out how organized crime in Chicago takes advantage of the complexity of the governmental organization of metropolitan Chicago, and the necessity, for crime control, of a more simplified and centralized governmental organization.

None of the surveys contains a thorough presentation of the facts or a thorough analysis of the factors involved in these geographical split-ups; and a thorough study of this regional problem still remains to be done.

CENTRALIZATION AND EXECUTIVE DIRECTION OF PROSECUTION

In regard to the prosecution, the lesson to be drawn, and one which is more or less explicitly drawn in some of the surveys, is that the work of prosecution locally (that is, the work of the State's attorneys) needs to be simplified in its organization and consolidated, with a definite location of the field of functional responsibility, and, in the more populous districts particularly, with definite provision for executive direction. This is set forth in the Cleveland report on prosecution (p. 208 ff.) which points out that the prosecuting attorneys do not get into touch with the cases early enough, with the consequence that when the time for presentation to the grand jury or trial comes, the cases are in an unprepared state. Furthermore, in many places the conduct of a case is divided between entirely separate offices, as, for instance in Cleveland, between the county and municipal prosecutor, or, in other places, between the city police who act in the rôle of local prosecutor and the county prosecutor.

The need is that of defining and delimiting the field of the prosecuting attorney so as, on the one hand, not to invade the field appropriate to the police and, on the other hand, not to invade the field appropriate to the jury and the court, and then, within that delimited and defined field, to concentrate the work and the responsibility in one official who has executive direction of a staff amply manned and amply equipped, with systematic coordination between

prosecution and police and the other organs of administration. So far as the surveys show, no such condition exists anywhere. While the problem is stated in many of the surveys, in none of them is it thought through. The relationship of the prosecuting attorney to the issuance of warrants and the institution of prosecution, the relationship of the prosecuting attorney to the conduct of the gathering of evidence, identifying the offender and ascertaining the circumstances of the offense, the machinery or work-methods which will coordinate the work of the prosecuting attorney with that of the police; questions such as these spring from the surveys, but have not as yet been exhaustively analyzed.

CONSOLIDATION OF CRIMINAL COURTS

The break-up of the prosecution into an excessive number of parts corresponds somewhat to a similar break-up in the courts. The court in which misdemeanors are disposed of and preliminary examinations of felonies are conducted, a court generally called police court or municipal court or justice of the peace, is usually not a part of the same court or judicial organization as the court in which the felonies are tried. A large volume of literature has developed on the subject of the consolidation or unifications of courts, and, in some of the surveys, there are indications of the need of and more or less definite recommendations for a consolidation of at least the criminal courts. For instance, the report of the committee on pardons, etc., of the National Crime Commission (p. 25) describes with approval a unification of criminal courts which had come to pass in Detroit. The Baltimore Crime Commission's report (p. 17) definitely recommends the consolidation of all criminal courts in Baltimore. A similar recommendation for Cleveland is made in the Cleveland survey on page 247 ff., and on page 300 the advantage of a unification under the executive direction of a chief justice is pointed out. Dean Pound in the summary (p. 606 ff.) discusses the need of, first, the unification of courts, second, the unification of the prosecuting system, and third, the unification of the administrative agencies, sheriffs, clerks, bailiffs, etc.; each organization a unit under centralized executive direction.

STATE SUPERVISION OF THE ADMINISTRATION OF CRIMINAL JUSTICE

With police, prosecution and courts each with its field defined and each with unified organization and ample provision for concentration of responsibility and administrative direction, there would still remain the problem of co-ordination between them. The gaps between police and prosecution affords one of the opportunities for unmerited escapes. This raises the problem of State supervision of the administration of justice. Minnesota (p. 14) states: "We consider it fundamental to realize that the crime situation is a matter of state-wide, as distinguished from local, concern," and proceeds to elaborate. Dean Pound's Cleveland Summary (page 611) ends with the statement:

> A unified judicial organization for the whole State and organization of the administrative agencies of justice for the whole State, under a head responsible for insuring an adequate functioning of the legal system in each locality, and clothed with power to make the proper adjustments to that end, may bring about the right compromises between urban and rural needs from time to time as occasion requires, preserve the balance as changes take place, without disturbance of the fundamental organization.

Several of the surveys point out, as for instance Illinois (page 818), Missouri (page 140), and Cleveland (page 354), that our present machinery, with its division of courts between the municipality and county, corresponding divisions of prosecution and of administrative staffs and excessive number of steps or stages, is an inheritance from a more rural era, and that we have sought to meet the problems of a highly urbanized civilization by retaining and multiplying the devices, methods, practices, and organization of more rural times. As so well stated by Dean Pound in his Cleveland Summary, page 590:

> To understand the administration of criminal justice in American cities to-day we must first perceive the problems of administration of

justice in a homogeneous, pioneer, primarily agricultural community of the first half of the nineteenth century, and the difficulties involved in meeting those problems with the legal institutions and legal doctrines inherited or received from seventeenth-century England. We must then perceive the problems of administration of justice in a modern heterogeneous, urban, industrial community and the difficulties involved in meeting those problems with the legal and judicial machinery inherited or received from England and adapted and given new and fixed shape for pioneer rural America.

Dean Pound proceeds to elaborate upon this theme, drawing his illustrations from the various reports of the Cleveland survey. He points out that it is not mere repairs of the existing machinery, not a mere adding to the number of prosecutors or judges that is needed, but rather something in the nature of a very fundamental reorganization, if the machinery of justice and its concepts are to fit the new conditions.

ORGANIZATION OF INFORMATIONAL MATERIAL

One step toward this reorganization and one which is practically universally agreed upon and definitely under way, is that of the State's acting as the unit or organ for the collection, organization, and distribution of the informational matter regarding crimes and criminals. State bureaus of identification, in which the identifying data will be collected and from which it will be distributed to the various police departments, prosecuting officials and courts, already exist in many of the States, and are recommended generally in the surveys. The New York (1928) report (p. 62) points out the necessity for centralization in the gathering of judicial statistics, and the New York (1929) report (p. 70), refers to a new statute which creates a centralized bureau in the department of correction which gathers both crime, judicial, and individual statistics. The Missouri report (p. 385) contains rather specific directions whereby complete and adequately classified judicial statistics of the administration of criminal justice would be accumulated in a central State bureau. Concerning its recommendation of a State statistical department with a State statistician at the head, the Missouri survey (p. 394) adds:

> Objection may be raised to vesting these powers in a State official, but it should be taken into consideration that they do not supplant any powers hitherto exercised by other officials over the acts of the several officials but only over the methods of recording those acts.

The Georgia report (p. 174) recommends the establishment, in some State department, of a bureau of crime statistics charged with the collecting, compiling, and analysis of helpful information pertaining to crime, the courts, and the criminals. Similarly, the Minnesota report (p. 20), recommends the creation of a central State authority which will maintain a State bureau of criminal identification and information. This recommendation, however, does not seem to include nor in any respect refer to information of a nature other than bare police nature, such as the bare record of the criminal career of the offender. On page 68 of the Minnesota report, there is the recommendation of a central State authority which will receive from the localities information regarding prosecutions and dispositions; in other words, what we have called judicial statistics. Similar recommendations will be found in the Rhode Island report (p. 14) and the California report (p. 16.)

The problem of the compilation, organization and distribution of informational material regarding the offender, bearing upon the disposition and treatment of the offender, such as psychiatric data, social history and the like, is one which has received practically no attention in the surveys but which should in the course of time become a recognized part of State informational service.

CONFUSION OF FUNDAMENTAL CONCEPTS CONCERNING THE OBJECTS OR ENDS OF THE ADMINISTRATION OF CRIMINAL JUSTICE

Some of to-day's confusions and inefficiencies in the administration of criminal justice in the United States result from confusions and contradictions in the fundamental concepts on which different parts of the criminal law or

its administration are based or on which different practices or methods of the administration are based. To state, in an oversimplified and, therefore, imperfect way, the two concepts upon which different parts of our present system are more or less consciously built: There is the concept of the punishment of the crime as the sole or predominant object of the law, based on a philosophy of moral compensation or moral retribution whereby a definite punishment would flow from a particular crime and society would be protected by means of the preventive or deterrent effects of the fear of this punishment; and, on the other hand, the concept of the treatment or disposition of the offender in accordance with the personality or habits of the offender and thereby protect society by curing the offender of his criminal tendencies or, if incurable, by permanently segregating him from the remainder of society.

Criminal justice, as pictured in these surveys and as we all know it, is permeated with principles and practices and methods based on both of these concepts, with consequent contradictions and confusions. This is well stated in Dean Pound's Cleveland summary (p. 588):

> * * * the criminal law of to-day, throughout the world, is made up more or less of successive strata of rules, institutions, traditional modes of thought, and legislative provisions representing different and inconsistent ideas of the end of criminal law, the purpose of penal treatment, and the nature of crime. This is true especially in Anglo-American criminal law. With us all stages of development and all theories and all manner of combinations of them are represented in rules and doctrines which the courts are called upon to administer. Indeed, all or many of them may be represented in legislative acts bearing the same date. The result is that our criminal law is not internally consistent, much less homogeneous and well organized. Even if the administrative machinery were all that it should be, and the personnel of administration were all that it should be, the condition of criminal law of itself would impede satisfactory administration.

Expressed in its most extreme or abstract form, the classical theory would provide by law an exact measure of punishment for each offense according to the objective nature of the offense, leaving to the judge little or no discretion. This theory or concept did not and could not

survive long in so extreme a form. Some degree of discretion came to be provided in the shape of laws specifying some allowable degree of variation in punishment, a narrow range between specified maxima and minima. But this discretion was deemed to be governed by moral considerations, usually in practice emotional or sentimental considerations, considerations of mitigation or severity as reward or retribution for the moral quality of the particular offense involved in the particular case before the court. In so far as the punishment is thus varied up or down for the individual case, such a system or concept is, of course, one of individualization of punishment. By such devices as indeterminate sentence, enlargement of range between maxima and minima, probation and parole, the emphasis upon and application of individualization have increased and extended. The mathematical schedule of punishment based on the legal definition of the offense itself has, however, persisted as a powerful and, at times, predominant factor in the determination of the penalty in the individual case; and the grant of probation or parole has been predominantly conceived as a form of severity or leniency, severity or mercy, severity or mitigation based on an appraisal of the moral quality of the offense in the particular case (which in practice usually meant the sentimental or emotional reaction of the judge to the offense and to a few superficial facts about the offender). When developments in the sciences of human behavior began to create doubts about any such simple conception of human nature as underlies the classical theory, and to indicate the possibilities of scientific, unemotional methods of treatment of the offender, new bases of individualization began to get injected into the modes of administering criminal justice, such as information about and consideration of the mental, moral, and emotional nature and capacity of the individual offender. As stated in the above quotation from Dean Pound, there are present in our criminal law and administration, not only the original classical theory of mathematical punishment of the crime, but varying degrees and mixtures of the application of individualization of punishment on the

bases of moral, emotional, sentimental, and scientific factors. A criminal law or procedure or administration thus constituted is naturally full of confusions and contradictions.

Indeed, the surveys themselves may be said to display these same confusions to some degree. It would be difficult to put one's finger on expressions within any single survey which are definitely self-contradictory. However, criticisms or recommendations contained in one portion, as for instance that dealing with courts, are at times obviously based on assumptions concerning the aims or methods of criminal justice which do not harmonize with the assumptions obviously underlying the criticisms or recommendations contained in the chapters dealing, for instance, with parole or the mental element in crime. For example, in the chapter of the Missouri survey on Necessary Changes in Criminal Procedure (pp. 349–350) there is emphasis of the need of "adequate punishment" imposed by the courts and the "certain execution of sentences," whereas the chapter on Pardons, Paroles, and Commutations (pp. 476–477) advocated that the offender should be subjected to "individualized treatment" based on such factors as his background, mental traits, conduct problems, and moral difficulties and resources for adjustment to society and that his "length of incarceration" should be conditioned on this type of factors.

None of the surveys quite thinks through the problem of reconciliation or presents a program for the organization and methods of an administration of criminal justice definitely based upon an internally consistent concept. They do, however, contain numerous references to the confusions and inefficiencies which result from an inadequate or ill-adjusted application of the lessons of modern psychiatry and other behavior sciences, and do furnish a wealth of illustrations, of which the authors themselves are not always aware, of the inadequacies and confusions which exist at present. In the Illinois chapter on The Probation and Parole System, (p. 446) there is definite disapproval of the term sentence and unmistakable approval of the indeterminate sentence combined with a system of parole whereby a modernized individualization of punishment or treatment may be administered; and parole is projected as the instrumentality whereby this individualization may be brought about. There is no discussion, however, of the reflex effects of any such theory upon the organization and working methods and principles of prosecution and courts. The Georgia report (p. 172) quotes approvingly the following from an article by Thomas Mott Osborn in the Atlantic Monthly, who, in speaking of retaliation as the basis of punishment or treatment, says:

> If we are to retaliate, it is essential that retaliation shall be just—"An eye for an eye, a tooth for a tooth"; but it is manifestly impossible to determine the exact amount of blame to be attached to the criminal himself. How can we ascertain how much is due to inheritance, how much to early environment, how much to other matters over which the offender has no control whatever? If we can not ascertain these, how can we tell just how much retaliation the offender deserves? When a man does not get enough punishment, it is bad; it encourages him to think he can always escape with less than his deserts; and thus crime is encouraged. When a man gets too much punishment it is bad; it makes him bitter and revengeful; and thus crime is encouraged. Failure results in either case, and the community suffers.

In his Cleveland summary (p. 585 ff.) Dean Pound states:

> One of the most insistent demands of to-day is for individualization of criminal justice—for a criminal justice that will not turn recidivists through the mill of justice periodically at regular interval, nor, on the other hand, divert the youthful occasional offender into a habitual criminal by treating the crime, in his person, rather than the criminal. The nineteenth century was hostile to individualization and to administrative discretion, which is the chief agency of individualization, seeking to reduce the whole administration of justice to abstractly just, formal, rigid rules, mechanically administered. This was true the world over. It was specially true, and true to an exaggerated degree, in America, because of the political ideas of the Puritan, who believed men should be "with one another, not over one another," of politico-legal ideas that grew out of contests between courts and crown in seventeenth-century England, of experience of the American colonists with executive and legislative justice, and of pioneer jealousy of administrative and governmental action. The result was to impose shackles of detailed rules and rigid procedure upon every sort of judicial, administrative, and governmental activity. In practice there was a general policy of "can't." No agency of government was to be allowed to do anything beyond a necessary minimum. Hence we got rigid, detailed pro-

cedure, and hard and fast schemes of penal treatment, lest prosecutor or court or prison authorities do something spontaneously in view of the exigencies of a particular case.

The Missouri survey (p. 414) contains a study of the volume of recidivism illustrated by the inmates of the St. Louis city jail, and from this and other data concludes, on page 428, that these data indicate the presence of elements in the causes of crime which can not be touched by mere punishment; that the volume of recidivism indicates the failure of the present concepts and that we have failed to accomplish that which we have set out to accomplish, namely, the prevention of crime and the protection of society.

The material of various kinds set forth in the surveys plainly indicates the need of development and acceptance of some fairly definite concept as to the purpose and possibilities of criminal law and criminal justice, and then of working out, gradually and progressively, a technique of procedure, as well as an appropriate organization and equipment of the administration of criminal justice, which will tend to supply a system more internally consistent or adjusted than our present one and better equipped to produce the desired results.

SEPARATE OR SPECIAL DISPOSITION, TREATMENT OR SENTENCING COURTS OR BOARDS

As we have seen, scattered throughout the surveys and in various connections are suggestions and recommendations in the direction of making the sentence or disposition turn to an increasing degree upon the facts concerning the offender, as distinguished from the facts about the particular offense involved in the particular case in which the plea of guilt or the conviction occurs. In none of the surveys do the analysis and discussion follow through to all of the implications of this idea in its effects upon the organization and equipment of the judicial system or of the other organs of the administration of justice. None of the surveys, for instance, carries the analysis to such questions as: How shall judges be qualified by professional training to understand

and apply with some degree of scientific validity, the information concerning the personality of the offender, or what changes in judicial organization or procedure would be necessary in order to fit our judicial organization and procedure into this principle of disposing of the offender in accordance with his history and nature?

One question which easily and inevitably occurs to the mind is whether the tribunal which deals with the issue of innocence or guilt and that which deals with sentence, treatment and disposition should be the same, or whether they should be separate branches of the judicial organization, each with a personnel technically qualified in its field and each with a procedure appropriate to its jurisdiction. In general, the surveys were either not conscious of this question as inevitably implied in the facts and considerations presented by them, or unwilling to do more than hint toward first steps without posing or answering the more radical and fundamental problems. There are, however, scattered observations which more or less frankly suggest or indicate the separate disposition, treatment or sentencing tribunal.

For instance, in the Illinois survey, the author of the chapter on The Supreme Court in Felony Cases on page 138, in the course of a discussion of the insanity defense, goes the whole way of saying—

> A still better suggestion, if it were not for the constitutional impediments, would be to instruct the jury to determine only whether or not the act was committed by the defendant, and if they answer that the deed was his, then to turn him over to a scientific group, including one or more persons legally trained, to determine what to do with him.

The Illinois survey does not pick up this suggestion in any other part or discuss it in any detail. In the chapter on the probation and parole system, page 499, it states that the trial judge is not in a position to properly fix the length of a sentence, that he does not possess sufficient knowledge in regard to the offender, and that, even if punishment be the only motivation for the sentencing, still the trial judge can not become sufficiently informed even to fix punishment appropriately. These remarks were made in the course of

a justification of parole, and were not followed up in any other part of the survey dealing with the judicial system. In this same chapter, however, there is a description of the functioning of the Illinois parole board, which points out that the overwhelming percentage of the cases receive an indeterminate sentence, the judge fixing only a minimum and a maximum, and that within those limits the parole board determines the length of sentence and to a great extent determines the institutions in which the sentence is to be carried out and the character of the institutional régime. Obviously, though this is not expressly stated, the function of the trial judge in Illinois is reduced to that of fixing the maximum and minimum, and even here his discretion is slight, since the statutes prescribe some maxima and minima; so that even though it be not called such, obviously the parole board is in Illinois the real sentencing or disposition court, working within certain limits fixed by statute and controlled to only a slight extent by the decisions of the trial judges. The chapter in this same survey on The Deranged or Defective Delinquent (p. 767) quotes approvingly from Judge Frederick A. Hill of the circuit court, Joliet, Ill.:

> Courts and juries should determine merely whether the crime was committed by the accused. A study of the reasons, mental and otherwise, is undoubtedly of value after conviction for the purpose of determining place of confinement, treatment, length of confinement, degree of restraint, advisability of parole, etc. If the court had power to fix punishment and place of confinement, evidence of this character might well be presented to the court after verdict and before sentence; but under the law, as it is at present in Illinois, most sentences are indeterminate and if we could have the right kind of a parole board, they would be best fitted to determine all those active questions with the aid of psychiatrists as well as the history of the person and other things.

Again, in this same chapter, on page 810, in the summary of the recommendations, there is the recommendation that all offenders be cleared through a clearing house where proper examinations after conviction would be conducted, and that the board of probation and parole should be composed of

judges and psychiatrists. This is a clear recommendation toward the institution of the separate sentencing or disposition tribunal.

The Minnesota Crime Commission's report (pp. 47–49) frankly states the actual situation to be that the courts are no longer the sentencing bodies and that the sentencing function has definitely passed to the board of parole. It even goes so far as to recommend that the board's name be changed from board of parole to "board of punishment." It asks—

> Some agency must fix the term of imprisonment, but why a board rather than the trial judge?

and then proceeds to answer its own question by pointing out the advantages of placing the function of punishment or disposition in such a board, as compared with the trial judge, to be: Firstly, that the terms fixed by such a centralized board would be more apt to be uniform for the same type of case than if the terms of punishment be fixed by numerous trial judges throughout the State; secondly, that the measure of punishment can be more intelligently fixed after the offender has been in a penal institution for some time than at the time of conviction, and that knowledge of the factors bearing on an intelligent measuring of punishment are not and can not be available to the trial judge; and thirdly, the advantage resulting from the fact that the board performs its duties at a place removed from the locality where the prisoner lives or the crime is committed. The commission proceeds to state, without reservation, that even if parole were wholly abolished, the fixing of the sentence after the accused has been committed to the penal institution would be a better system of punishment than the reposing of this jurisdiction in the trial judge.

In this same report, on page 56, the Minnesota Crime Commission recommends that the slight sentencing jurisdiction still left in the courts, namely the fixing of a maximum term, be taken from them and transferred to the parole board, for the same reasons as those which had caused the transfer of the fixing of the minimum sentence from the

judges to the parole board, and on page 60 the commission concludes:

> The board of parole is the State sentencing agency with respect to all persons committed to the State penal institutions. The court's sentence is only a matter of form. * * * Probation, sentencing, paroling, and pardoning, all involve the same considerations. The study and administration of all of them should be correlated. The several agencies which determine or remit punishment, to each of which the criminal may appeal in turn, should have one general supervision.

These passages in the Illinois and Minnesota reports constitute the clearest and frankest statements contained in the surveys to the effect that the sentencing power has passed from, is passing from, or should pass from the ordinary courts of law and into special tribunals equipped for the administration of this function of sentencing, disposition, or treatment. Remarks here and there in other surveys contain implications in the same direction. The New York (1927) report (p. 252) discussed whether probation, that is, putting an offender on probation, is truly a judicial function. For reasons which were confessed to be expedient rather than logical, the New York commission was not ready to recommend that probation be taken from the courts; but it did point out that neither the type of investigation needed for an intelligent disposition of the offender nor administration of the treatment of the probationer can truly be called judicial in any conventional sense of the term "judicial."

That this idea of special disposition tribunals has the approval of experienced trial judges appears, for instance, from the address of Judge E. Ray Stevens, late justice of the Supreme Court of Wisconsin, printed in the November (1930) number of the Journal of the American Institute of Criminal Law and Criminology, where Judge Stevens says:

> What I want to present is not a hair-brained theory, but a conviction that has been deep-seated, arising out of my experience of nearly a quarter of a century in sentencing and dealing with convicted persons. I feel that we have too often dealt with the offender as if he were a machine-made product that could be graded and given mass treatment, like the product of a factory. While the fact is, as has been pointed out in the chairman's address, these offenders need individual consideration and treatment.

> My experience leads me to have confidence in the jury system. I think that juries are the best means yet found for the determination of guilt or innocence. But I am equally certain that when guilt or innocence has been determined, the responsibility of the trial judge should cease. From then on the convicted person should be dealt with by some body with power to ascertain the past record of the offender, to observe his progress from day to day, and with power to make the punishment fit the needs of each individual case in order to carry out the dual purpose of reforming the offender and of protecting society. * * *
>
> What I should like to see done is to have the trial judge relieved of this responsibility of determining what should be done with convicted persons. I should like to see these persons committed to some qualified board who would treat these convicted individuals as the doctor treats his patients.

The January (1931) report of the Judicial Advisory Council of Illinois (p. 36) recommends that no minimum period of incarceration be prescribed for any offense, but only a maximum, leaving the period of imprisonment entirely to the department of public welfare. This is in effect a transfer of the sentencing power from the courts to the parole authority.

We see, therefore, that the surveys express, more or less clearly and firmly, a realization that the disposition of the offender is a matter of such nature that the classical conception of a schedule of punishment to fit the crime is no longer in vogue nor responsive to our contemporary knowledge about human behavior. One problem, therefore, is that of building up such a judicial organization and equipment, with such a system of procedure, as will include and provide technically qualified and equipped tribunals and careful and just procedure for the determination of punishments or other dispositions based increasingly on the record, character, mentality, and personality of the offender; and some of the surveys indicate that for this purpose special tribunals, separate from those which try the cases, should come to be established. None of the surveys attempts a thorough discussion of or detailed conclusions concerning this organization or procedure; and that remains a problem still to be thought through.

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THE INTERRELATED NATURE OF ALL PARTS OF THE ADMINISTRATION OF JUSTICE—THE IMPORTANCE OF INTEGRATION OF THESE PARTS IN BASIC PRINCIPLES, ORGANIZATION AND PROCEDURE

Here and there in this report opportunity or occasion has occurred for pointing out the closely interrelated nature of all the parts or subdivisions of the administration of criminal justice, and the importance of the integration and adjustment of these parts. The work of the surveys was, from necessities of economy and specialized talents, divided into various subdivisions, as, for instance, police, prosecution, courts, probation, parole, and penal institutions. Some of the surveys, misled perhaps by this necessity of dividing the work into functional subdivisions, assumed each subdivision to be a whole for which conclusions may be stated and recommendations made without fitting these into conclusions and recommendations arrived at by other subdivisions. The various recommendations do not always fit and even in some respects contradict each other in basic principle or method.

Committees of bar associations, crime commissions, social agencies, or other groups engaged in studies of specific parts of the field, such as parole or qualifications of jurors or other special topic, are quite apt to make recommendations concerning the particular part of the field included in the study, based upon defects discoverd in that part, without envisaging the reflex effects of the proposed reform upon the remainder of the administration or the necessity of avoiding maladjustments which might be created by a change in one part of the administration without the necessary integrating changes in the others. The pending Boston study is seeking to produce an integration or synthesis, by having each recommendation proposed by any subdivision, such as prosecution or probation, submitted to the whole group and subjected, by means of a sort of clinic, to an integrating or synthesizing process. Nothing is more fundamentally important than that a commission, such as the National Commission on Law Observance and Enforcement, as well as professional groups and the general public realize the importance of striving toward an organic unity of administration, and the necessity of avoiding recommendations in any part of the field, from police to penal institutions, without at the same time pointing out the harmonizing or integrating changes that will need to be made in the other parts. Otherwise there is the danger of substituting new maladjustments for those that exist at present. It is noteworthy that in the report (January, 1930) of the special committee on the parole problem appointed by Gov. Franklin D. Roosevelt, one of the emphasized conclusions is to the effect (p. 33):

CRIME PROBLEM A CORRELATED WHOLE

> The committee is of the opinion that one of the great problems in the past has been the failure to consider the problem as a correlated whole from the time of arrest to the time when the prisoner is returned to society. We have talked in terms of prisons alone, of laws alone, or of parole alone, and have directed our attention to the amelioration or correction of each one of those factors separately. As a matter of fact, if we are going to do anything lastingly effective, we must consider the problem of laws, courts, prisons, executive clemency, parole, and readjustment as interrelated parts of the whole social picture.

MULTIPLICITY AND COMPLEXITY OF THE PROBLEMS

Crime has its sources in the innumerable complex social processes. For this reason alone, if there were none other, the problem of dealing with crime, of reducing, preventing or deterring crime, would be complex. But furthermore, society's instrumentalities for dealing with crime are inevitably subject to the same complex social forces and operate within or are operated as a part of the whole social fabric. More than that, society's instruments at any particular time, as at the present, contains numerous survivals of previous eras. Consequently, without elaborating further upon the causes of the complexity and multiplicity of the problems, it will suffice to state that no single or simple remedy can remove whatever ineffectiveness resides in the present system of dealing with crime. Nothing can be more ridiculous, to

anyone who understands the crime problem even slightly, than the claim made for this or that reform as a panacea, such as imprisoning fourth offenders for life or decreasing the number of peremptory challenges allowed for the defense or permitting the judge to comment on the evidence. The more one reads and examines the surveys, the more one becomes possessed with a sense of the complexity of the problem and the impossibility of meeting it through easy remedies. This disturbing complexity, though not always announced and proclaimed by the authors of the surveys, strikes one from every page and at times is definitely stated. For instance, the New York Crime Commission in its 1928 report, on page 11, states that there is no unit cause of crime, that many factors contribute to the making of any criminal career, and therefore, no simple remedies can be recommended for the prevention or cure of crime. On page 315 of the same report, the commission gave its findings upon the studies of 145 individual offenders, supported by detailed accounts of the careers of each of these 145 cases, expressly deriving therefrom the conclusion that the causes of crime are indeed numerous and multiform and complex. Dean Pound, in his Cleveland summary, at page 561, summed up this aspect in the following words:

> In the administration of justice there are many subtle forces at work of which we are but partially conscious. Tradition, education, physical, and social influence of all sorts and degrees make up a complex environment in which men endeavor to reach certain results by means of legal machinery. No discussion simply in terms of men or of legal and political machinery, or of both, ignoring this complex environment, will serve. At whatever cost in loss of dramatic interest or satisfying simplicity of plan, we must insist on plurality of causes and plurality and relativity of remedies.

In approaching the problem of definite and concrete conclusions and recommendations as to what needs to be done to improve the effectiveness of the administration of criminal justice, it is, consequently, of the highest importance that this complexity of causes with consequent "plurality and relativity" of remedies be emphasized, and that the people of this country be made conscious thereof. The desire for simple and quick solutions is natural; but we must

guard ourselves against the disillusionments that would inevitably come from reliance upon quick, easy, and simple reforms. It is quite dangerous to invoke the idea that small steps which can be easily and quickly taken are well worth while because they mean that much progress. Such is not always the case; for the small steps taken by themselves and relied upon for themselves, and not realized as small parts of a comprehensive program, are often likely to do great harm in the direction of further confusing the system with new maladjustments and disharmonies. Not that experimentation should be discouraged. In the nature of things, every law, every practice, every step taken by society is experimental. But a step in the wrong direction increases the difficulties of getting over into the right direction. Consequently, wisdom dictates that each step be formulated and taken with a more comprehensive program in mind and with which that step will harmonize and toward whose accomplishment that step will lead. A program, to be productive of good in the long run, should be conceived as an organic whole, whose parts are adjusted and harmonious and which, by means of progressively adopted legislation and practices, can be gradually put into effect.

REFORM THROUGH EXHORTATION—"POLITICS"

The efficiency and quality of the administration are dependent, amongst other factors, upon the caliber—mental, educational, and moral—of the men who administer. That the prosecuting attorney should be able and honest requires no survey to demonstrate. That probation officials should know their business will be disputed by none.

In connection with commonplaces such as these, there usually appears, in and out of the surveys, the much-used but never-defined word "politics." "Politics," whatever it may mean, is blamed for this or that quite freely. Indeed, parts of some of the surveys seem to be pieces of special pleading for blaming everything upon the connection between politics and the prosecutor or politics and the police. The American public surely knows that politics plays its

part in fixing the quality of the administration of justice as in all other public organisms. If a case be prosecuted with dominatingly political (in the colloquial sense) motivations or conducted from the point of view of its "political" effect, the efficiency and quality of the result will, of course, be diminished.

There does not, however, seem to be any very great use or value in trite and general denunciatory or exhortatory observations, of which there are a few examples in the surveys.

For instance, in the Illinois survey (p. 331) one of the pieces of advice is—

> Elect to the office of State's attorney an efficient, incorruptible, and industrious lawyer, who will devote his entire time to the performance of his duties and whose conduct of the office will be as free from partisan politics as any other judicial officer.

The specifications for carrying out this recommendation are not given. Without these specifications, we would all say bravo for the recommendation, but could hardly find any very concrete assistance toward carrying it out. On page 393, in the chapter dealing with the Municipal Court of Chicago, there is a very generalized and wholesale condemnation such as—

> The court is full of incompetence, of political influences, of lamentable laxness in meeting an unprecedented tide of crime.

Again, in this same chapter on page 417—

> In the last analysis, a court is as good as the ability, the courage, and the political independence of its judges make it. We have shown how sadly these qualities have diminished during the past 10 years of the court's existence. We should, therefore, be inviting a very serious trifling with our problem if we should insist upon the accomplishment of secondary objectives when the main objective remains untouched. Such civic interest as is possible in Chicago, and there are apparently definite reasons for hope in a renaissance of activity, should direct itself to delivering, so far as it is humanly possible, the municipal court from the blighting influence of machine politics.

Similarly, the Missouri report (p. 159) states as one of the conclusions in relation to the prosecuting attorney, that "the importance of selecting for these positions lawyers

of standing, integrity, industry, ability, and experience can not be over-emphasized."

Now, obviously, observations of this nature, however indisputable, are not particularly useful in helping us to know just what to do. If those who man the administration of justice or any part thereof have not the mental, educational, and moral qualifications for the work assigned to them or are too influenced by what is called politics, one can think of at least three general classes of reasons for or sources of these conditions, namely: First, there may be something in the nature of the organization of the administration, that is, the function or kind of work assigned to the position (prosecuting attorney, for example) or the opportunities afforded by the position, which deprives the position of attractiveness to men of the requisite caliber, or in the nature of the compensation or term of office or mode of selection or other attribute which militates against bringing into office men with the necessary or desirable caliber; second, there may be elements in the general social and political processes of American life which produce this failure to place in the offices of the administration of justice men of the requisite ability and character; or, third, there may be something in the then existing social and political forces of a particular community which, though not characteristic of America as a whole, produce the deplored results in that community.

Probably all three of these types of causes are responsible, in any particular community at any particular time, for such lack of capacity or caliber in the personnel or such unscrupulousness of motivation as exists in the administration of justice in that community at that particular time. In so far as the causes for conditions described in a survey are local and temporary, namely, characteristic only of the particular place at the particular time of the survey, the conclusions of that survey furnish lessons applicable to that place and time and not of more generalized and permanent application. In so far, however, as the quality of the administration in a particular community is attributable to social and political forces and ideals which are typi-

cal of our country as a whole, an analysis of these social forces and ideals would contain lessons for the whole country.

None of the surveys sought to make an exhaustive analysis of the fundamental causes and dominating social and political forces which produced the conditions against which the above-quoted general denunciations and exhortations were directed. Such a task, of course, was outside of and beyond their scope and intentions. None of them sought to trace the causative or interacting relationships between structural organization, procedure, practice, and working methods of the various parts of the administration and the caliber and character of the men who form the personnel of those parts. It is this class of causative factor, namely, the structural organization and basic principles, methods, and equipment of the administration, which falls appropriately within the scope of surveys such as those covered in this report. Any analysis of this relationship between the organization, methods, and equipment of the various parts of the administration and the caliber of the men obtained to man those parts would be most interesting and useful. For instance, if a survey was correct in its low appraisal of the caliber of the personnel of a particular court, to what extent was this condition attributable to the absence of technical or professional training for the function assigned to that court, as for instance, the sentencing of offenders, or to the absence of the requisite equipment for the efficient performance of that function, or to what extent to the inadequacy of the salaries, or what were the causative factors of this condition? If the prosecuting attorney, as stated in some of these studies, be too immersed in politics, to what extent is this due to the scope or limitation of the function which the statutes or practice assigns to him or permits him to perform; to what extent to the salary or term of office; to what extent to the method of selection; to what extent to other principles or methods of the organization or conduct of prosecution?

There can not be any doubt that the nature of the function assigned to an office, the adequacy of the equipment furnished

to perform that function, the degree to which responsibility for that performance is concentrated or diffused and other factors such as these have a tremendous effect upon the quality of men who are attracted to or selected for the office. Though nobody could or would claim for the surveys that they contain a comprehensive analysis of all the factors which produce the present quality of the administration of criminal justice, including the caliber of its personnel, they represent a progressive stage in the development of the technique for inquiry in this field, and they have furnished us with considerable definite, concrete, and acceptable facts and conclusions concerning the causes for and manifestations of the inefficiencies of the administration, with indications of the directions of reform. Some of the major items in the fields of prosecution and courts have been described or noted in this report.

SUMMARY OF MAJOR CONCLUSIONS AND RECOMMENDATIONS

The following is a summary of what may justifiably be selected as the major findings and recommendations derivable from an analysis of the surveys:

(1) The tremendous complexity, not only of the causes of crime, but also of the administration of criminal justice, and the multiplicity of reforms needed, the rather radical nature of some of these, and the prime importance of integration and harmonization between the principles, organization, methods, and procedures of the different parts of the administration.

(2) Juvenile delinquency is the heart of the problem of crime prevention.

(3) The progressive nature of criminal careers and, consequently, the importance of the early stages of such careers, and, consequently, the importance of the general run of obscure and minor cases, as compared with the sensational and capital crimes which receive a relative overemphasis by both the officials and the general public.

(4) Relative minor importance of procedure, in the sense of procedure governing conduct of trials, and relative major

importance of administration, in the sense of the organization, equipment, and working principles and methods of the organs of the administration of criminal justice.

(5) Emphasis upon the importance of the miscalled "minor courts," such as courts of preliminary examination, police courts and magistrate's courts, and of the definite location of the field of responsibility of those courts; the need of adequacy of equipment and carefulness of working methods in these courts, and a procedure which will enable the responsible function of these courts to be performed efficiently; the need of functional classification of such courts and of the cases which come before them.

(6) Careful working methods and administrative practices in nolles, acceptances of plea of lesser offense and other forms of dismissals and dispositions without trial, whereby the responsibility for these dispositions will be definitely located, careful records will be required and the dispositions will be based on thorough inquiry and on definite principles.

(7) Increase of compensation of prosecuting attorneys, increase of civil service methods in the selection, retention, and promotion of members of the staffs of prosecuting attorneys, and other features which will tend to promote an improvement in the professional capacity and caliber of these officials and staffs.

(8) Definition of the appropriate field of the prosecuting attorney; and improvements in the office organization and working methods of the prosecution, which will make prosecuting attorneys more efficient agencies for the performance of the functions appropriately assigned to them.

(9) Abolition of requirement of grand jury indictment in every felony case.

(10) Right of the accused to waive trial by jury.

(11) Increase of judge's control over the conduct of the trial.

(12) Development and adoption of the conception of insanity and other mental diseases and mental defectiveness as an element in the treatment or disposition of the offender rather than an element in the question of guilt or innocence.

(13) Effectiveness of criminal justice as a preventive of crime is dependent upon the disposition or treatment of the offender; and there is need of the development and adoption of principles and concepts concerning the objectives of criminal justice, to which principles and concepts the whole system, its organization and procedure, should be adjusted.

(14) In the processes of trying and passing upon the issue of guilt or innocence and hearing and passing upon the disposition of the offender, the segregation of the presentation and hearing of those facts which bear on the guilt issue from the presentation and hearing of those which bear on the disposition issue, thus removing from the trial of the guilt issue the confusions resulting from the introduction, at that stage, of those facts and considerations not logically relevant to the guilt issue but which are appropriate to the disposition issue; and the formulation and development of procedures appropriate to each of these issues, particularly procedures appropriate to the disposition hearing.

(15) Gradual centralization, regional or State, of the administration of probation and other noninstitutional treatments.

(16) Simplification of the structural organization of the prosecution and of the courts, looking toward the unification of prosecution at least in each county and possibly ultimately in the State, and the unification of courts.

(17) Greater recognition of the region, as distinguished from arbitrary units like the city, as the unit in the structural organization of the administration of criminal justice.

(18) Development toward centralized State supervision of the administration of criminal justice in all its parts.

(19) Gradual development of centralized State informational service, including identification of the offender, criminal record of the offender, and the social history and facts concerning the mental and moral characteristics of the offender, as well as judicial and prosecutional statistics.

(20) Gradual development of special tribunals for passing upon the disposition issue, with special qualifications in the personnel of such tribunals to pass upon the disposition

or treatment problem, and with appropriate procedure and appropriate informational bases for the solution of the disposition problem in the case of each individual offender.

SUMMARY OF MAJOR SUBJECTS OR TOPICS REQUIRING FURTHER STUDY OR RESEARCH

The following constitute a selection of the major subjects or topics requiring further research:

(1) A comprehensive and intensive study of the administration of and effectiveness of the juvenile court and other public agencies dealing with juvenile delinquency.

(2) Comprehensive and intensive studies of the organization, methods, and equipment of municipal, police, or similar courts in typical urban communities.

(3) Present methods of the administration of the issuance of arrest warrants and of the determination to institute prosecution, and other research into the problems of the definite locating of responsibility for the issuance of warrants and the institution of prosecution, and into the organization of this part of the administration and the procedure to govern it, so that this stage of prosecution may be conducted with definite concentration of responsibility and with efficiency.

(4) The classification of cases and calendars in municipal, police, and magistrate's courts, whereby the cases which, owing to their different nature, need specialized procedures and specially qualified tribunals will receive such special procedures and the benefits of such special qualifications.

(5) An intensive study of the need of and the appropriate function to be performed by the preliminary hearing under contemporary American urban conditions.

(6) Survey of the administration of justice in typical rural areas and inquiry bearing upon the desirable organization and methods of rural minor courts.

(7) Further inquiry bearing upon and the development of recommendations or conclusions concerning the proper and appropriate function of the prosecuting attorney, particularly his relationship to investigation or detection on the one hand and disposition of the offender on the other.

(8) A study of the problem of compromise in criminal cases; to what extent should compromise of criminal cases be recognized as a legitimate mode of administration, and what should be the methods and safeguards.

(9) Additional factual efficiency studies of the adequacies of staff and equipment of the prosecuting attorney, and more definite recommendations concerning the size of staff needed, specialization and classification in the staff, structural organization of the office and the working methods and record system of the office.

(10) Comprehensive and intensive research into the actual operations and results of the public defender system in one or two communities in which it has been in operation for a considerable period, and an analysis of the problem of the defense under conditions which will inhere in the newer aspects, methods, and principles of the administration of criminal justice.

(11) Further study of the appropriate function of the jury and its appropriate relationship to disposition of the offender, to mitigation and severity of punishment and to fields of inquiry which are not parts of the inquiry into the accused's guilt or innocence of the crime charged.

(12) Development, in some detail, of the procedure which should govern the ascertainment of facts and hearings on the disposition of the offender, such as types of evidences, modes of production of evidence, record system, part to be played in such procedure by the offender and by his counsel, part to be played by prosecuting attorney or other public advocate, and other related problems; indeed an intensive and comprehensive search into, analysis of and statement concerning the principles, technique and procedure to be applied to the disposition of the offender.

(13) Further gathering of factual data relating to a determination of the principles governing the appropriate place of probation in the administration, as, for instance, such questions as should probation be part of the judicial system or part of the correctional or welfare system; should

it be State-wide in its administrative organization or corresponding in its units to judicial or other political units; also the organization or administrative relationships between probation and parole.

(14) Development of recommendations or conclusions upon the organization, methods and principles of the administration of the fixing of bail and enforcement of bail, in the direction of the individualization of bail determinations based on the history, character, standing, personality and record of the accused.

(15) More intensive studies of the regional problem, such as whether the region be the appropriate unit for police or prosecution or courts.

Any of the above items could, of course, be elaborated into greater detail, and there are many other conclusions and recommendations in the surveys and other subjects for which the need of further research appears. The above constitute a selection of those that seem most important relatively.

Each of the surveys contains numerous recommendations, many of which are designed to be embodied in statutes or constitutions, others of which are little more than pieces of advice to the officials engaged in enforcing the law. None of the surveys attempted to set up, for application in practice, a comprehensive integrated and selfconsistent program, which will include not only the constitutional and legislative measures which might be necessary, but also the specifications for the structural organization and working methods of the administration. Sooner or later each State ought to bring about a statement of such a comprehensive program, which will be the chart or design in accordance with which an improved system of criminal justice in that State can be gradually, progressively and harmoniously developed.

CONCLUSION

The surveys have sown many seeds which have already taken root. Here and there throughout the country reforms are being promoted which, though not always to the

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The surveys have sown many seeds which have already taken root. Here and there throughout the country reforms are being promoted which, though not always to the

knowledge of the promoters, are traceable to the data or ideas contained in the surveys.

Without the surveys, the opportunities now open could not have ripened. Indeed, it is only through the technique and processes of such surveys, that the nature of the conditions and the nature of the problems can come to be discovered and realized. The surveys have opened the eyes of the people of this country to the complex nature of the crime problem and to the possibilities of an intelligent and scientific approach to the study of that problem. They have forged some technique for that study. They have developed considerable data, statistical and otherwise, which can be accepted as starting points for further consideration and fact gathering; and they have formulated or furnished the basis for the formulation of many conclusions which can be accepted as parts of a comprehensive program of reform. Using this data and these conclusions as starting points, official and unofficial commissions, law schools, research institutes and others, by instituting and directing further necessary fact gathering and by the development of an integrated formulation of conclusions and recommendations, can take the lead in pointing out to the people of this country the general directions and outlines of a system of administration of criminal justice which will apply the knowledge that shall have been accumulated and will fit American conditions.

A STATISTICAL ANALYSIS OF THE DISPOSITION OF CRIMINAL CASES IN VARIOUS CITIES AND RURAL AREAS OF THE UNITED STATES

BASED ON DATA PRESENTED IN CRIMINAL JUSTICE SURVEY REPORTS

TABLE I.—*Disposition of criminal cases in cities of more than 100,000*

	New York City, 1925 [1]	New York City, 1926 [2]	4 large Pennsylvania cities, 1926 [3]	Chicago and Cook County, 1926 [4]	New York up-State cities over 100,000, 1925 [5]	New York up-State cities over 100,000, 1926 [6]	Cleveland, 1919 [7]	St. Louis, 1923–24 [8]	Baltimore, 1927 [9]	Baltimore, 1928 [9]	Milwaukee, 1926 [4]	Cincinnati, 1925–26 [10]	Jackson County Mo. (Kansas City), 1923–24 [8]	Multnomah County, Oreg. (Portland), 1928 [11]
PRELIMINARY HEARING														
Total cases entering preliminary hearing	19,084	8,144	31,439	11,251	-------	1,603	3,927	1,492	2,311	2,248	1,838	1,445	1,697	737
No disposition indicated	-------	-------	546	36	-------	-------	-------	(12)	-------	-------	-------	-------	(12)	34
Eliminated on responsibility of prosecution	83	-------	118	3,359	-------	-------	439	107	-------	-------	57	146	523	[13] 89
Discharged	7,747	3,255	19,400	2,386	-------	531	483	119	396	342	235	239	257	25
Disposed of as misdemeanor	3,090	1,308	1,177	17	-------	355	80	110	[14] 139	[14] 111	-------	378	23	301
Bond forfeited or never apprehended	31	7	153	462	-------	-------	-------	(12)	-------	-------	22	6	(12)	-------
Other dispositions	125	173	[15] 1,989	94	-------	12	24	81	104	113	1	20	55	-------
Pending	3	35	7	7	-------	33	-------	(12)	-------	-------	4	-------	(12)	-------
Total eliminated	11,079	4,778	23,390	6,361	-------	931	1,026	417	639	566	319	789	858	449
Remaining	8,005	3,366	8,049	4,890	-------	672	[16] 2,901	1,075	1,672	1,682	1,519	656	839	288
GRAND JURY														
Total cases entering grand jury	8,005	3,366	8,049	4,890	1,177	672	[16] 3,236	[17] 1,075	1,672	1,682	-------	656	[17] 839	288
No disposition indicated	2	-------	19	75	1	1	-------	-------	-------	-------	-------	3	-------	12
No true bill	2,262	840	895	1,388	155	90	697	6	107	71	-------	175	-------	55
No information issued	-------	-------	-------	-------	-------	-------	-------	69	-------	-------	-------	-------	35	-------
Other dispositions	[18] 119	3	8	39	34	24	-------	-------	-------	-------	-------	-------	-------	-------
Pending	-------	1	17	1	-------	1	-------	-------	28	59	-------	-------	-------	-------
Total eliminated	2,383	844	939	1,503	190	116	697	75	135	130	-------	178	35	67
Remaining	5,622	2,522	7,110	3,387	987	556	2,539	1,000	1,537	1,552	-------	478	804	221
Original indictments	-------	-------	-------	1,866	-------	-------	-------	-------	-------	-------	-------	-------	-------	81
TRIAL COURT														
Total cases entering trial court	5,622	2,522	7,110	5,253	987	556	2,539	1,000	1,537	1,552	1,519	478	804	302
No disposition indicated	4	-------	148	-------	2	-------	-------	(12)	-------	-------	-------	-------	(12)	-------
Eliminated on responsibility of prosecution	143	48	725	1,638	39	33	518	[19] 102	49	55	86	31	[19] 271	57
Dismissed by court	684	317	35	28	11	4	15	37	-------	-------	170	-------	9	-------
Acquitted	505	224	2,146	580	47	21	228	83	257	236	72	40	49	10
Bond forfeited or never apprehended	1	-------	72	124	4	-------	90	(12)	-------	-------	18	7	(12)	-------
Other dispositions	38	48	64	76	35	19	67	82	-------	-------	3	27	77	-------
Pending	243	128	65	225	48	26	25	(12)	76	61	1	7	(12)	46
Total eliminated	1,618	[20] 765	3,255	2,671	186	[20] 103	943	304	382	352	350	112	406	113
Guilt established—total	4,004	1,757	3,855	2,582	801	453	1,596	696	1,155	1,200	1,169	366	398	189
On Plea	-------	-------	-------	-------	-------	-------	-------	585	-------	-------	-------	-------	289	168
Guilty of offense charged	763	229	-------	453	539	267	978	-------	-------	-------	689	142	-------	-------
Guilty of other offense [21]	2,700	-------	-------	[22] 1,633	106	-------	220	-------	-------	-------	16	-------	-------	-------
Felony	-------	496	-------	-------	-------	67	-------	-------	-------	-------	-------	29	-------	-------
Misdemeanor	-------	817	-------	-------	-------	62	-------	-------	-------	-------	-------	68	-------	-------
Other pleas	55	7	-------	-------	7	-------	17	-------	-------	-------	-------	-------	-------	21
By conviction after trial	-------	-------	-------	-------	-------	-------	[23] 367	-------	-------	-------	-------	-------	-------	-------
Offense charged	219	101	-------	184	102	47	-------	97	-------	-------	428	105	99	-------
Other offense [21]	113	-------	-------	306	20	-------	-------	14	-------	-------	18	-------	10	-------
Felony	-------	55	-------	-------	-------	3	-------	-------	-------	-------	-------	7	-------	-------
Misdemeanor	-------	50	-------	-------	-------	7	-------	-------	-------	-------	-------	15	-------	-------

Footnotes on pp. 188–189.

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TABLE I.—*Disposition of criminal cases in cities of more than 100,000*—Continued

	New York City, 1925	New York City, 1926	4 large Pennsylvania cities, 1926	Chicago and Cook County, 1926	New York up-State cities over 100,000, 1925	New York up-State cities over 100,000, 1926	Cleveland, 1919	St. Louis, 1923–24	Baltimore, 1927	Baltimore, 1928	Milwaukee, 1926	Cincinnati, 1925–26	Jackson County Mo. (Kansas City), 1923–24	Multnomah County, Oreg. (Portland), 1928
Nature of offense not stated in report	52				19									
Manner not indicated in report	102	2		6	8		14				18			

[1] From report of the Crime Commission of New York State, Legislative Document, No. 94, 1927, pp. 148 and 156. Includes all felonies.
[2] From the Crime Commission of New York State, Report of the Subcommission on Statistics, 1928, pp. 70, 81, and 86. Covers the last half of the year 1926 and includes all felonies.
[3] From Report of the Commission Appointed to Study the Laws, Procedure, etc., Relating to Crime and Criminals, Pennsylvania, 1929, p. 52. Covers 29 major offenses including the more serious misdemeanors and excluding liquor cases.
[4] From the Illinois Crime Survey, 1929, pp. 38, 41, and 43. Includes all felonies except liquor cases.
[5] From report of the Crime Commission of New York State, Legislative Document, No. 94, 1927, pp. 149 and 156. Includes all felonies.
[6] From the Crime Commission of New York State, Report of the Subcommission on Statistics, 1928, pp. 72, 82, and 87. Covers the last half of the year 1926 and includes all felonies.
[7] From the Cleveland Foundation, a Survey of Criminal Justice in Cleveland, 1922, p. 95. Includes all felony cases.
[8] From the Missouri crime survey, 1926, pp. 274 and 299. Covers the period from Oct. 1, 1923, to Oct. 1, 1924, and includes all felonies except liquor cases.
[9] From Baltimore Criminal Justice Association, sixth annual report, 1928. This tabulation contains major offenses including some serious misdemeanors. Certain assault cases are included in which the examining magistrate may impose sentence.
[10] From Cincinnati Bureau of Governmental Research, Statistical Analysis of Criminal Processes in Cincinnati. Includes all felonies and covers the period June 1, 1925, to June 1, 1926. Where part of felony charges entered against the same individual were dropped during proceedings against him, the charges abandoned are excluded entirely from the tabulation. In other surveys as a rule, such charges were included, thus increasing the number of cases eliminated at various stages in proceedings.
[11] From Preliminary Report of the Survey of Administration of Criminal Justice in Oregon, 1931, pp. 26–31. Includes all felonies, including a small percentage of liquor cases.
[12] Included under "Other dispositions."
[13] The survey report indicates that this group of cases consists largely of cases dismissed for want of prosecution, but some other cases dismissed by the by the court are profiably included.

[14] Cases sentenced for assault in which the magistrate possessed final jurisdiction.
[15] Includes 753 cases held for the grand jury as to which no further records were discovered.
[16] The number of cases remaining after preliminary hearing does not correspond with the total number of cases before the grand jury, since the latter represents cases acted upon by the grand jury in the year 1919 whether bound over in 1918 or 1919.
[17] Consists largely of cases going to the prosecuting attorney to be prosecuted upon information.
[18] Includes 92 indicted for misdemeanor.
[19] Cases dismissed for want of prosecution are included under "Other dispositions."
[20] Cases resulting in misdemeanor sentences are here included under "Guilt established" rather than under eliminations as in the report of the commission.
[21] "Other offense" normally signifies a lesser offense. Except in the 2 New York reports "lesser offense" is the term employed.
[22] In 883 of these cases the felony charge was waived.
[23] Includes 293 convictions of felony and 74 of misdemeanor.

TABLE II.—*Percentage distribution of criminal cases in cities of more than 100,000 according to disposition*

	New York City, 1925	New York City, 1926	4 large Pennsylvania cities, 1926	Chicago and Cook County, 1926	New York upstate cities over 100,000, 1926	Cleveland, 1919	St. Louis, 1923–24	Baltimore, 1927	Baltimore, 1928	Milwaukee, 1926	Cincinnati, 1925–26	Jackson County, Mo. (Kansas City), 1923–24	Multnomah County, Oreg. (Portland), 1928
Total cases entering the courts	19,084	8,144	31,439	[1] 13,117	1,603	[2] 3,927	1,492	2,311	2,248	1,838	1,445	1,697	[3] 818
	Per cent 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0
PRELIMINARY HEARING													
No disposition indicated			1.7	.3									4.2
Eliminated on responsibility of prosecution	.4		.4	25.6		11.2	7.2			3.1	10.1	30.8	10.9
Discharged	40.6	40.0	61.7	18.2	33.1	12.3	8.0	17.2	15.3	12.8	16.5	15.2	3.0
Disposed of as misdemeanor	16.2	16.1	3.7	.1	22.2	2.1	7.4	6.0	4.9		26.2	1.4	36.8
Bond forfeited or never apprehended	.2	.1	.5	3.5						1.2	.4		
Other dispositions	.6	2.1	6.4	.7	.7	.6	5.4	4.5	5.0	.1	1.4	3.2	
Pending	[4]	.4	[4]	.1	2.1					.2			
Total eliminated	58.0	58.7	74.4	48.5	58.1	26.2	28.0	27.7	25.2	17.4	54.6	50.6	54.9
Remaining	42.0	41.3	25.6	51.5	41.9	73.8	72.0	72.3	74.8	82.6	45.4	49.4	45.1
GRAND JURY													
Total cases entering grand jury	42.0	41.3	25.6	51.5	41.9	73.8	72.0	72.3	74.8		45.4	49.4	45.1
No disposition indicated	[4]		.1	.5	.1						.2		1.5
No true bill	11.9	10.3	2.8	10.6	5.6	15.9	.4	4.6	3.2		12.1		6.7
No information issued							4.6					2.1	
Other dispositions	.6	[4]	[4]	.3	1.5								
Pending		[4]	.1	[4]	[4]			1.2	2.6				
Total eliminated	12.5	10.3	3.0	11.4	7.2	15.9	5.0	5.8	5.8		12.3	2.1	8.2
Remaining	29.5	31.0	22.6	40.1	34.7	57.9	67.0	66.5	69.0		33.1	47.3	36.9
TRIAL COURT													
Total cases entering trial court	29.5	31.0	22.6	40.1	34.7	57.9	67.0	66.5	69.0	82.8	33.1	47.3	36.9
No disposition indicated	[4]		.5										
Eliminated on responsibility of prosecution	.8	.6	2.3	12.5	2.0	11.8	6.8	2.1	2.4	4.7	2.1	16.0	7.0
Dismissed by court	3.6	3.9	.1	.2	.3	.3	2.5			9.3		.5	
Acquitted	2.6	2.8	6.8	4.4	1.3	5.2	5.6	11.3	10.5	3.9	2.8	2.9	1.2
Bond forfeited or never apprehended	[4]		.2	1.0		2.1				1.0	.5		
Other dispositions	.2	.6	.2	.6	1.2	1.5	5.5			.2	1.8	4.5	
Pending	1.3	1.5	.2	1.7	1.6	.6		3.3	2.7	[4]	.5		5.6
Total eliminated	8.5	9.4	10.3	20.4	6.4	21.5	20.4	16.7	15.6	19.1	7.7	23.9	13.8
Guilt established—total	21.0	21.6	12.3	19.7	28.3	36.4	46.6	49.8	53.4	63.5	25.4	23.4	23.1
On plea							39.2					17.0	20.5
Guilty of offense charged	4.0	2.8		3.5	16.6	22.4				37.4	9.9		
Guilty of other offense	14.2			12.5		4.9				.8			
Felony		6.1			4.2						2.0		
Misdemeanor		10.1			3.9						4.7		
Other pleas	.3	.1				.4							
By conviction after trial						8.4							
Offense charged	1.1	1.2		1.4	2.9		6.5			23.3	7.3	5.8	
Other offense	.6			2.2			.9			1.0		.6	2.6
Felony		.7			.2						.5		
Misdemeanor		.6			.5						1.0		
Nature of offense not stated in report	.3												
Manner not indicated in report	.5	[4]		.1		.3				1.0			

[1] Includes original indictments by grand jury as well as cases entering preliminary hearing.
[2] The Cleveland survey did not carry exactly the same group of cases through to final disposition by the trial court. The percentages here given are based upon the proportions established in 3,927 cases receiving preliminary hearing and 3,236 cases entering the grand jury in 1919.
[3] Includes 81 original indictments by the grand jury, or 9.9 per cent of the total.
[4] Less than 0.05 per cent.

TABLE III.—*Disposition of criminal cases in medium-sized cities and rural territory*

	Pennsylvania, exclusive of 4 large cities, 1926[1]	New York cities 5,000–100,000, 1925[2]	New York cities 5,000–100,000, 1926[3]	Buchanan County, Mo., (St. Joseph), 1923–24[4]	8 Illinois counties 60–85 per cent urban,[5] 1926[6]	7 Illinois counties 35–59 per cent urban,[7] 1926[6]	7 Missouri counties 40–70 per cent urban,[8] 1922–1924[9]	11 Missouri counties 30–39 per cent urban,[10] 1922–1924[9]	18 Missouri counties under 30 per cent urban,[11] 1922–1924[9]	Rural New York State, 1925[2]	Rural New York State, 1926[12]	2 rural Illinois counties,[13] 1926[6]
PRELIMINARY HEARING												
Total cases entering preliminary hearing	----------	----------	1,088	300	1,846	644	1,080	1,223	1,240	----------	1,312	26
No disposition indicated	----------	----------	----------	(14)	3	19	(14)	(14)	(14)	----------	----------	----------
Eliminated on responsibility of prosecution	----------	----------	----------	33	327	68	63	69	26	----------	----------	5
Discharged	----------	----------	302	54	271	90	33	94	17	----------	124	----------
Disposed of as misdemeanor	----------	----------	138	30	18	5	13	18	1	----------	60	----------
Bond forfeited or never apprehended	----------	----------	----------	(14)	5	68	(14)	(14)	(14)	----------	2	3
Other dispositions	----------	----------	25	14	42	4	22	14	8	----------	17	----------
Pending	----------	----------	7	(14)	1	----------	(14)	(14)	(14)	----------	3	----------
Total eliminated	----------	----------	472	181	667	254	131	195	52	----------	206	8
Remaining	----------	----------	616	119	1,179	390	949	1,028	1,188	----------	1,106	18
GRAND JURY												
Total cases entering grand jury	12,480	1,228	616	[15] 119	1,179	390	[15] 949	[15] 1,028	[15] 1,188	944	1,106	18
No disposition indicated	61	2	----------	----------	43	39	----------	----------	----------	----------	----------	3
No true bill	1,900	230	86	----------	177	61	----------	----------	3	223	211	2
No information issued	----------	----------	----------	----------	----------	----------	26	16	74	----------	----------	----------
Other dispositions	[16] 356	17	15	----------	[17] 135	13	----------	----------	----------	13	26	----------
Pending	----------	----------	1	----------	4	----------	----------	----------	----------	----------	1	----------
Total eliminated	2,317	249	102	----------	359	113	26	16	77	236	238	5
Remaining	10,163	979	514	----------	820	277	923	1,012	1,111	708	868	13
Original indictments	----------	----------	----------	----------	447	260	----------	----------	----------	----------	----------	7

TRIAL COURT												
Total cases entering trial court	10,163	979	514	119	1,267	537	923	1,012	1,111	708	868	20
No disposition indicated	329	----------	----------	(14)	----------	----------	(14)	(14)	(14)	1	----------	----------
Eliminated on responsibility of prosecution	2,037	39	16	[18] 32	340	117	[18] 258	[18] 236	[18] 207	10	42	----------
Dismissed by court	169	23	12	17	3	11	21	43	124	15	19	----------
Acquitted	1,790	47	24	4	46	29	52	54	81	19	51	----------
Bond forfeited or never apprehended	126	9	----------	(14)	39	8	(14)	(14)	(14)	3	----------	----------
Other dispositions	252	19	22	2	6	9	136	145	167	24	34	----------
Pending	54	50	43	(14)	284	120	(14)	(14)	(14)	21	77	8
Total eliminated	4,757	187	[19] 117	55	718	294	467	478	579	93	[19] 223	8
Guilt established—total	5,406	792	397	64	549	243	456	534	532	615	645	12
On plea	----------	----------	----------	59	----------	----------	359	423	440	----------	----------	----------
Guilty of offense charged	----------	577	248	----------	315	136	----------	----------	----------	476	431	9
Guilty of other offense	----------	107	----------	----------	157	62	----------	----------	----------	----------	----------	1
Felony	----------	----------	57	----------	----------	----------	----------	----------	----------	----------	62	----------
Misdemeanor	----------	----------	36	----------	----------	----------	----------	----------	----------	----------	61	----------
Other plea	----------	5	6	----------	----------	----------	----------	----------	----------	9	1	----------
Conviction after trial												
Offense charged	----------	66	33	3	65	31	81	88	74	41	71	2
Other offense	----------	19	----------	2	8	12	16	23	18	12	----------	----------
Felony	----------	----------	9	----------	----------	----------	----------	----------	----------	----------	5	----------
Misdemeanor	----------	----------	8	----------	----------	----------	----------	----------	----------	----------	11	----------
Nature of offense not stated in report	----------	11	----------	----------	----------	----------	----------	----------	----------	21	----------	----------
Manner not indicated in report	----------	7	----------	----------	4	2	----------	----------	----------	12	3	----------

Footnotes on p. 194.

[1] Report of the Commission Appointed to Study the Laws, Procedure, etc., Relating to Crime and Criminals, Pennsylvania, 1929, pp. 52 and 56. Covers 29 major offenses including the more serious misdemeanors and excluding liquor cases.
[2] From report of the Crime Commission of New York State, Legislative Document 94, 1927, pp. 149 and 157. Includes all felonies.
[3] From the Crime Commission of New York State, Report of the Subcommission on Statistics, 1928, pp. 74, 83, and 88. Covers the last half of 1926 and includes all felonies.
[4] From Missouri Crime Survey, 1926, pp. 274 and 299. Covers the period Oct. 1, 1923, to Oct. 1, 1924, and includes all felonies except liquor cases.
[5] The counties included and their 1920 populations are as follows: Kane, 97,499; La Salle, 92,925; Macon, 65,175; Peoria, 111,710; Rock Island, 92,297; St. Clair, 136,520; Sangamon, 100,262; and Winnebago, 90,929. The term "urban" as used in this table refers to population residing in incorporated places 2,500 and over.
[6] From the Illinois Crime Survey, 1929, pp. 38, 41, and 43. Includes all felonies except liquor cases.
[7] The counties included and their 1920 populations are as follows: Adams, 62,188; Kankakee, 44,940; Knox, 46,727; McLean, 70,107; Marion, 37,497; Stephenson, 37,743; and Vermilion, 86,162.
[8] The counties included and their 1920 populations are as follows: Cole, 24,680; Greene, 68,698; Jasper, 75,941; Linn, 24,778; Marion, 30,226; Pettis, 35,813; and Randolph, 27,633.
[9] From the Missouri Crime Survey, 1926, pp. 274 and 299. Covers the period Oct. 1, 1922, to Oct. 1, 1924, and includes all felonies except liquor cases.
[10] The counties included range in population (1920 census) from 17,000 to 30,000 with the exception of St. Louis County with a population of 100,737.
[11] The counties included range in population (1920 census) from 10,000 to 33,000, averaging about 25,000.
[12] From the Crime Commission of New York State, Report of the Subcommission on Statistics, 1928, pp. 76, 84, and 89. Covers the last half of 1926 and includes all felonies.
[13] The counties and their 1920 populations are Cumberland, 12,858, and Stark, 9,693.
[14] Included under "Other dispositions."
[15] Consists chiefly of cases going to prosecuting attorney to be prosecuted on information rather than grand-jury indictment.
[16] Includes 319 cases held for the grand jury but not presented.
[17] Includes 106 cases never presented.
[18] Cases dismissed for want of prosecution are included under "Other dispositions."
[19] Cases sentenced for misdemeanor are included under "Guilt established" rather than under eliminations as in the survey report.

TABLE IV.—*Percentage and distribution of criminal cases in medium-sized cities and rural territory according to disposition*

	New York cities, 5,000–100,000, 1926	Buchanan County, Mo. (St. Joseph), 1923–24	8 Illinois counties, 60–85 per cent urban, 1926	7 Illinois counties, 35–59 per cent urban, 1926	7 Missouri counties 40–70 per cent urban, 1922–1924	11 Missouri counties 30–39 per cent urban, 1922–1924	18 Missouri counties under 30 per cent urban, 1922–1924	Rural New York State, 1926	2 rural Illinois counties, 1926
Total cases entering the courts	1,088	300	[1] 2,293	[1] 904	1,080	1,223	1,240	1,312	[1] 33
	Per cent 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0	*Per cent* 100.0
PRELIMINARY HEARING									
No disposition indicated			0.1	2.1					
Eliminated on responsibility of prosecution		27.7	14.3	7.5	5.8	5.7	2.1		15.2
Discharged	27.8	18.0	11.9	10.0	3.1	7.7	1.4	9.5	
Disposed of as misdemeanor	12.7	10.0	.8	.5	1.2	1.5	.1	4.6	
Bond forfeited or never apprehended			.2	7.6				.2	9.1
Other dispositions	2.3	4.7	1.8	.3	2.0	1.1	.6	1.2	
Pending	.6		(2)					.2	
Total eliminated	43.4	60.4	29.1	28.1	12.1	16.0	4.2	15.7	24.3
Remaining	56.6	39.6	70.9	71.9	87.9	84.0	95.8	84.3	75.7
GRAND JURY									
Total cases entering grand jury	56.6	39.6	70.9	71.9	87.9	84.0	95.8	84.3	75.7
No disposition indicated			1.9	4.3					9.1
No true bill	7.9		7.7	6.8			.2	16.1	6.1
No information issued					2.4	1.3	6.0		
Other dispositions	1.4		5.9	1.4				2.0	
Pending	.1		.2					.1	
Total eliminated	9.4		15.7	12.5	2.4	1.3	6.2	18.2	15.2
Remaining	47.2		55.2	59.4	85.5	82.7	89.6	66.1	60.5

[1] Includes original indictments by the grand jury as well as cases entering preliminary hearing.
[2] 1 case.

TABLE IV.—*Percentage and distribution of criminal cases in medium-sized cities and rural territory according to disposition*—Continued

	New York cities, 5,000–100,000, 1926	Buchanan County, Mo. (St. Joseph), 1923–24	8 Illinois counties, 60–85 per cent urban, 1926	7 Illinois counties, 35–59 per cent urban, 1926	7 Missouri counties 40–70 per cent urban, 1922–1924	11 Missouri counties 30–39 per cent urban, 1922–1924	18 Missouri counties under 30 per cent urban, 1922–1924	Rural New York state, 1926	2 rural Illinois counties, 1926
TRIAL COURT									
Total cases entering trial court	47.2	39.6	55.2	59.4	85.5	82.7	89.6	66.1	60.5
Eliminated on responsibility of prosecution	1.5	10.6	14.9	12.9	23.9	19.3	16.7	3.2	
Dismissed by court	1.1	5.7	.1	1.2	1.9	3.5	10.0	1.4	
Acquitted	2.2	1.3	2.0	3.2	4.8	4.4	6.5	3.9	
Bond forfeited or never apprehended			1.7	.9					
Other dispositions	2.0	.7	.3	1.0	12.6	11.9	13.4	2.6	
Pending	4.0		12.2	13.3				5.9	24.2
Total eliminated	10.8	18.3	31.2	32.5	43.2	39.1	46.6	17.0	24.2
Guilt established—total	36.4	21.3	24.0	26.9	42.3	43.6	43.0	49.1	36.3
On plea		19.7			33.3	34.6	35.5		
Guilty of offense charged	22.8		13.8	15.1				32.9	27.2
Guilty of other offense			6.9	6.9					3.0
Felony	5.2							4.7	
Misdemeanor	3.3							4.6	
Other plea	.6							.1	
Conviction after trial—									
Offense charged	3.0	1.0	2.8	3.4	7.5	7.2	6.0	5.4	6.1
Other offense		.6	.3	1.3	1.5	1.8	1.5		
Felony	.8							.4	
Misdemeanor	.7							.8	
Manner not indicated in report			.2	.2				.2	

TABLE V.—*Outline showing rearrangement of criminal case mortality statistics in applying uniform classification*

	Cleveland	Cincinnati	Missouri	Illinois
PRELIMINARY HEARING				
1. No disposition indicated			(Included in other dispositions).	No record.
2. Eliminated by prosecution: (*a*) Dismissed for want of prosecution.	Dismissed for want of prosecution.	Dismissed for want of prosecution. Dismissed by request of prosecuting witness.	Dismissed for want of prosecution.	Dismissed for want of prosecution.
(*b*) Nolle prosequi	Nolle prosequi. "No papers".		Nolle prosequi	Nolle prosequi.
3. Discharged	Discharged	Dismissed outright Continued indefinitely.	Discharged	Discharged. Error, no complaint. Complaint denied.
4. Disposed of as misdemeanor	Charge reduced		Disposed of as misdemeanor	Reduced to misdemeanor: Not punished. Punished.
5. Bond forfeited or never apprehended.		Bond forfeited	(Included under other dispositions).	Bond forfeited. Never apprehended.
6. Other dispositions	Other dispositions not resulting in sentence.	Other dispositions Transferred to domestic relations court.	Other dispositions includes: Certified to juvenile court. No record. Continued generally. Dismissed—insanity. Bond forfeited or never apprehended.	Certified to other courts. No order.
7. Pending				Pending.
GRAND JURY				
1. No disposition indicated		Disposition unknown		No record.
2. No true bill	No bill	Ignored	No true bill	No bill.
3. No information issued			No information issued	
4. Other disposition				Indicted for misdemeanor.
5. Pending				Pending.

TABLE V.—*Outline showing rearrangement of criminal case mortality statistics in applying uniform classification*—Con.

	Cleveland	Cincinnati	Missouri	Illinois
TRIAL COURT				
1. No disposition indicated			(Included in other dispositions).	
2. Eliminated by prosecution:				
(a) Dismissed for want of prosecution.	Discharged for want of prosecution.		do	Dismissed for want of prosecution.
(b) Nolle prosequi	Nolle prosequi (4 subdivisions).	Nolle prosequi	Nolle prosequi	Nolle prosequi.
				Stricken with leave to reinstate.
3. Dismissed by court	Discharged		Disposed of on action of court.	Discharged by court.
4. Acquitted	Acquitted, first trial	Acquitted	Tried and acquitted	Acquitted by jury.
	Acquitted, second trial.	Directed verdict—not guilty.		Felony waived—acquitted.
5. Bond forfeited or never apprehended.	Bail forfeited or never in custody.	Bond forfeited	(Included in other disposition).	Bond forfeited. Never apprehended.
6. Other dispositions	Miscellaneous dispositions resulting in no sentence.	Other dispositions	Other dispositions. (Includes some items separated out in other surveys.)	Certified to other courts.
		To domestic relations court.		Defendant dead.
		Parole violated, returned to institution.		Mistrial.
		Disagreement of jury.		Off call.
				Adjudged insane.
7. Pending		Still pending	(Included in other dispositions).	Pending.

	New York, 1925	New York, 1926	Pennsylvania
PRELIMINARY HEARING			
1. No disposition indicated			
2. Eliminated by prosecution:			
(a) Dismissed for want of prosecution.	Dismissed for want of prosecution		Dismissed for want of prosecution.
(b) Nolle prosequi			
3. Discharged	Discharged outright	Discharged	Discharged outright.
4. Disposed of as misdemeanor	Charge reduced and disposed of as misdemeanor.	Charge reduced to misdemeanor	Charge reduced and disposed of summarily.
5. Bond forfeited or never apprehended.	Bail forfeited	Bail forfeited	Bail forfeited.
			Failed to appear.
6. Other dispositions	Other dispositions not resulting in indictment.	All others	Other dispositions not resulting in indictment.
	Transferred to other jurisdiction.	To grand jury.	Discharged by coroner.
	Transferred to juvenile court.	Held or convicted on prior charge.	Defendant died.
	Held for insanity examination.	Transferred to other jurisdiction.	Held for insanity examination.
			Held for grand jury, no further record.
7. Pending	Pending	Pending	Pending.
GRAND JURY			
1. No disposition indicated			
2. No true bill	No disposition indicated	No information	No disposition indicated.
3. No information issued	No bill	No bill	No true bill.
4. Other disposition	Defendant dies		
	Held or convicted on prior charge.	Held or convicted on prior charge	Indicted; no further record.
	Held for insanity examination.	Indicted for misdemeanor.	Other dispositions.
	Indicted for misdemeanor.	Transferred to other jurisdiction.	
		Indicted but at large.	
5. Pending		Pending	Pending.
TRIAL COURT			
1. No disposition indicated			
2. Eliminated by prosecution:	No disposition indicated		No disposition indicated.
(a) Dismissed for want of prosecution.	Dismissed; failure to prosecute		
(b) Nolle prosequi	Dismissed on motion of district attorney.	Dismissed on motion of district attorney.	Nolle prosequi.
3. Dismissed by court	Dismissed on motion of defendant's counsel.	Dismissed on motion of defense	Indictment quashed.
		Dismissed by judge.	Dismissed by court.
4. Acquitted	Acquitted	Acquitted	Acquitted by jury.
			Not guilty—order of court.
5. Bond forfeited or never apprehended.	Bond forfeited or defendant at large		Bail forfeited or defendant at large.
6. Other dispositions	Returned as parole violator	Jury disagreed	Jury disagreed.
	Adjudged feeble-minded or insane.	Held or convicted on prior charge.	Convicted on prior charge.
	Defendant dies.	All others.	Adjudged insane.
	Transferred to other jurisdiction.		Other dispositions.
	Held or convicted on prior charge.		
	Jury disagreed.		
7. Pending	Pending	Pending	Pending.

TABLE VI.—*Disposition of felony cases in St. Louis, 1925 and 1926* [1]

	1925		1926	
	Number	Per cent	Number	Per cent
Total cases entering courts	2,323	100.0	2,074	100.0
PRELIMINARY HEARING				
Total cases entering preliminary hearing	2,125	91.5	1,933	93.2
No disposition indicated	15	.6	36	1.7
Eliminated on responsibility of prosecution	402	17.4	266	12.8
Discharged [2]	368	15.9	369	17.8
Disposed of as misdemeanor				
Bond forfeited or never apprehended	76	3.3	24	1.2
Other dispositions	38	1.6	24	1.2
Pending			2	.1
Total eliminated	899	38.8	721	34.8
Remaining	1,226	52.7	1,212	58.4
GRAND JURY				
Total cases entering grand jury	1,226	52.7	1,212	58.4
No disposition indicated	15	.6	29	1.4
No true bill	3	.1	1	
No information issued	56	2.5	20	1.0
Other dispositions				
Total eliminated	74	3.2	50	2.4
Remaining	1,152	49.5	1,162	56.0
Original indictments	198	8.5	141	6.8
TRIAL COURT				
Total cases entering trial court	1,350	58.0	1,303	62.8
No disposition indicated	1			
Eliminated on responsibility of prosecution	212	9.1	199	9.6
Dismissed by court [2]	70	3.0	51	2.4
Acquitted	94	3.9	99	4.8
Bond forfeited or never apprehended	20	.9	33	1.6
Other dispositions	46	2.0	37	1.8
Pending	9	.4	14	.7
Total eliminated	452	19.3	433	20.9
Guilt established—total	898	38.7	870	41.9
On plea:				
Guilty of offense charged	448	19.3	445	21.4
Guilty of other offense	332	14.3	322	15.5
By conviction:				
Offense charged	102	4.4	87	4.2
Other offense	16	.7	16	.8

[1] Prepared from W. C. Jamison, Criminal Cases in the Courts of St. Louis, pp. 6-9.
[2] Includes cases continued indefinitely.

TABLE VII.—*Disposition of felony cases in the municipal court, Milwaukee County (Wis.), 1919–1928* [1]

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
Total cases before court	1,530	1,478	1,797	1,845	2,059	1,777	1,686	1,837	1,906	1,513
Eliminated:										
Eliminated by prosecution	51	35	32	17	[2] 497	131	47	45	21	16
Dismissed or acquitted by judge	40	125	86	101	214	207	245	285	255	220
Acquitted by jury	13	9	12	17	29	36	23	39	45	36
Otherwise disposed of	32	68	71	157	82	140	40	73	47	52
Total eliminated	136	237	201	292	322	574	355	442	349	324
Pending at end of year	504	484	633	791	382	172	188	144	62	10
Guilt established	890	757	963	762	855	1,031	1,143	1,251	1,495	1,179
On plea of guilty	625	510	649	445	510	624	696	809	1,051	785
On conviction—										
By judge	240	219	278	290	309	371	378	395	399	359
By jury	25	28	36	27	36	36	69	47	45	35

[1] Based upon "statistics of crime for the county of Milwaukee" for the years 1919–1928, issued by the clerk of the municipal court of Milwaukee.
[2] In 1923, pending cases were examined by a special assistant district attorney and an accumulation of cases was nolled.

TABLE VIII.—*Disposition of criminal cases involving major offenses selected counties of Minnesota, 1924* [1]

	Ramsey County (St. Paul)	Hennepin County (Minneapolis)	6 counties of 22,000–56,000 population
PRELIMINARY HEARING [2]			
Total cases investigated	569	744	196
Eliminated:			
Disposition not indicated			1
Discharged	162	107	[3] 43
Disposed of as misdemeanor	38		9
Bond forfeited for nonappearance	6	12	1
Total eliminated	206	119	54
Remaining	363	625	142
TRIAL COURT [4]			
Total cases investigated	386	652	127
Eliminated:			
Accusation filed, no prosecution	47		8
Dismissals and nolles	90	139	22
Acquitted after trial	13	52	1
Bail forfeited		8	2
Total eliminated	150	199	33
Guilt established	236	453	94
On plea:			
Guilty of offense charged	140	285	80
Guilty of lesser offense	85	129	4
By conviction	11	39	10

[1] Prepared from unpublished statistical surveys made by the Minnesota Crime Commission. The table deals with indictable offenses (gross misdemeanors and felonies) other than violations of the liquor laws.
[2] Data on preliminary hearings in each county relate to the municipal court of the principal city within the county.
[3] Includes 6 cases continued indefinitely.
[4] Data as to trial courts relate to the district court operating within the county.

TABLE IX.—*Disposition of cases involving major felonies, Virginia, 1917, 1922, and 1927* [1]

	8 cities [2]			26 rural counties		
	1917	1922	1927	1917	1922	1927
Total cases	397	671	675	238	507	461
Eliminated:						
Nolle prosequi	74	199	126	38	119	107
Not guilty	73	94	89	48	85	80
Other dispositions	3	9	8	15	25	27
Pending or disposition unknown	25	14	19	11	30	34
Total eliminated	175	316	242	112	259	248
Guilt established	222	355	433	126	248	213
Plea of guilty	112	216	327	64	140	129
Convicted	110	139	106	62	108	84
	Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Total cases	100	100	100	100	100	100
Eliminated:						
Nolle prosequi	19	30	19	16	23	23
Not guilty	18	14	13	20	17	17
Other dispositions	1	1	1	6	5	6
Pending or disposition unknown	6	2	3	5	6	8
Total eliminated	44	47	36	47	51	54
Guilt established	56	53	64	53	49	46
Plea of guilty	28	32	48	27	28	28
Convicted	28	21	16	26	21	18

[1] From Virginia Survey of Criminal Justice, ch. 4, which was unpublished at the time this table was prepared. The classes of felonies included are homicide, aggravated assault, rape, burglary, robbery, larceny, and forgery, which included 87 per cent of the total felony cases. The sample cities and counties studied include about one-third the population of the State.

[2] The cities are Clifton Forge, Roanoke, Staunton, Charlottesville, Richmond, Petersburg, Newport News, and Suffolk.

TABLE X.—*Disposition of homicide, robbery, and burglary cases in cities of more than 100,000, by percentages*

	New York City, 1925	New York City, 1926	Chicago and Cook County, 1926	New York up-State cities over 100,000, 1926	3 largest Missouri cities, 1923–24	Baltimore, 1923	Milwaukee, 1926	Cincinnati, 1925–26
ALL MAJOR OFFENSES								
Total cases entering courts	19,084	8,144	13,117	1,603	3,489	2,248	1,838	1,445
Eliminated:								
Preliminary hearing—per cent	58.0	58.7	48.5	58.1	41.7	25.2	17.4	54.6
Grand jury—do	12.5	10.3	11.4	7.2	3.2	5.8	0.0	12.3
Trial court—do	8.5	9.4	20.4	6.4	21.9	15.6	19.1	7.7
Guilt established—do	21.0	21.6	19.7	28.3	33.2	53.4	63.5	25.4
HOMICIDE								
Total cases entering courts	1,040	587	577	35	120	90	33	76
Eliminated:								
Preliminary hearing—per cent	64.4	75.7	47.3	51.5	28.3	28.9	9.1	32.9
Grand jury—do	19.0	12.6	3.1	2.8	2.5	7.8	0.0	21.1
Trial court—do	9.7	6.1	33.8	11.4	29.2	21.1	48.5	9.2
Guilt established—do	6.9	5.6	15.8	34.3	40.0	42.2	42.4	36.8
ROBBERY								
Total cases entering courts	1,480	591	2,774	137	599	170	59	160
Eliminated:								
Preliminary hearing—per cent	47.2	44.8	23.0	51.8	29.9	28.8	3.4	28.7
Grand jury—do	6.2	7.9	20.0	8.8	2.2	8.2	0.0	16.3
Trial court—do	13.8	11.9	24.9	6.6	33.0	18.8	23.7	15.6
Guilt established—do	32.8	35.4	32.1	32.8	34.9	44.2	72.9	39.4
BURGLARY								
Total cases entering courts	2,377	873	1,529	217	466	721	158	119
Eliminated:								
Preliminary hearing—per cent	40.6	38.9	30.7	53.5	26.8	20.5	4.4	23.5
Grand jury—do	8.1	10.9	11.0	6.9	3.4	4.3	0.0	10.9
Trial court—do	10.0	9.4	22.8	3.2	21.1	9.7	5.1	8.4
Guilt established—do	41.3	40.8	35.5	36.4	48.7	65.5	90.5	57.2

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TABLE XI.—*Disposition of homicide, robbery, and burglary cases in cities of less than 100,000 and in rural territory, by percentages*

	New York cities of 5,000–100,000, 1926	8 Illinois counties 60–85 per cent urban, 1926	7 Illinois counties 35–59 per cent urban, 1926	36 rural and partially urban Missouri counties, 1922–1924	Rural New York State, 1926	2 rural Illinois counties, 1926
ALL MAJOR OFFENSES						
Total cases entering courts	1,088	2,293	904	3,542	1,312	33
Eliminated:						
Preliminary hearing—per cent	43.4	29.1	28.1	10.7	15.7	24.3
Grand jury—do	9.4	15.7	12.5	3.2	18.2	15.2
Trial court—do	10.8	31.2	32.5	43.1	17.0	24.2
Guilt established—do	36.4	24.0	26.9	43.0	49.1	36.3
HOMICIDE						
Total cases entering courts	33	55	10	152	55	0
Eliminated:						
Preliminary hearing—per cent	27.3	5.5	0.0	6.6	14.6	-------
Grand jury—do	12.1	23.6	20.0	1.3	18.2	-------
Trial court—do	30.3	38.2	40.0	55.3	32.7	-------
Guilt established—do	30.3	32.7	40.0	36.8	34.5	-------
ROBBERY						
Total cases entering courts	66	287	46	188	67	4
Eliminated:						
Preliminary hearing—per cent	40.9	25.1	15.2	13.3	11.9	0.0
Grand jury—do	7.6	10.1	17.4	4.3	11.9	0.0
Trial court—do	21.2	38.0	28.3	37.7	35.8	100.0
Guilt established—do	30.3	26.8	39.1	44.7	40.4	0.0
BURGLARY						
Total cases entering courts	159	285	157	462	260	15
Eliminated:						
Preliminary hearing—per cent	33.4	15.1	8.3	9.1	10.0	0.0
Grand jury—do	5.7	11.2	7.6	2.4	11.2	13.3
Trial court—do	6.9	29.5	36.9	33.8	8.1	20.0
Guilt established—do	54.0	44.2	47.2	54.7	70.7	66.7

TABLE XII.—*Disposition of all felony cases and of homicide, robbery, and burglary cases in various jurisdictions of New York State, 1926, by percentages*

	New York City, 1926				New York up-State cities over 100,000, 1926				Rural New York, 1926			
	All felonies	Homicides	Robberies	Burglaries	All felonies	Homicides	Robberies	Burglaries	All felonies	Homicides	Robberies	Burglaries
Total cases entering preliminary hearing	8,144	587	591	873	1,603	35	137	217	1,312	55	67	280
	Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
PRELIMINARY HEARING												
Discharged	40.0	74.3	35.4	28.0	33.1	48.6	42.4	13.8	9.5	12.8	10.4	5.4
Disposed of as misdemeanor	16.1	.7	7.1	10.1	22.2	-------	8.0	36.0	4.6	-------	-------	3.5
Other dispositions	2.2	.7	1.8	.5	.7	2.9	-------	2.8	1.4	-------	1.5	1.1
Pending	.4	-------	.5	.3	2.1	-------	1.4	.9	.2	1.8	-------	-------
Total eliminated	58.7	75.7	44.8	38.9	58.1	51.5	51.8	53.5	15.7	14.6	11.9	10.0
Remaining	41.3	24.3	55.2	61.1	41.9	48.5	48.2	46.5	84.3	85.4	88.1	90.0
GRAND JURY												
No true bill	10.3	12.6	7.9	10.9	5.6	2.8	6.6	4.6	16.1	18.2	6.0	9.7
Other dispositions	-------	-------	-------	-------	1.6	-------	2.2	2.3	2.0	-------	5.9	1.5
Pending	-------	-------	-------	-------	-------	-------	-------	-------	.1	-------	-------	-------
Total eliminated	10.3	12.6	7.9	10.9	7.2	2.8	8.8	6.9	18.2	18.2	11.9	11.2
Remaining	31.0	11.7	47.3	50.2	34.7	45.7	39.4	39.6	66.1	67.2	76.2	78.8
TRIAL COURT												
Eliminated on responsibility of prosecution	.6	-------	.8	.7	2.0	2.8	2.2	1.4	3.2	5.5	3.0	2.7
Dismissed by court	3.9	2.2	4.3	3.9	.3	2.8	1.5	-------	1.4	1.8	1.5	.4
Acquitted	2.8	1.7	5.1	3.2	1.3	2.9	2.9	-------	3.9	12.7	7.5	.8
Other dispositions	.6	.5	1.2	1.0	1.2	2.9	-------	1.4	2.6	6.5	16.4	1.1
Pending	1.5	1.7	.5	.6	1.6	-------	-------	.4	6.9	7.2	7.4	3.1
Total eliminated	9.4	6.1	11.9	9.4	6.4	11.4	6.6	3.2	17.0	32.7	35.8	8.1
Guilt established	21.6	5.6	35.4	40.8	28.3	34.3	32.8	36.4	49.1	34.5	40.4	70.7

TABLE XIII.—*Condensed table showing disposition of criminal cases by percentages*

[Total cases entering courts equals 100 per cent]

	Eliminated			Guilt established	Guilty on plea		Convicted	
	Preliminary hearing	Grand jury	Trial court		All pleas	Lesser offense	All convictions	Lesser offense
	Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
New York City, 1925	58.0	12.5	8.5	[1] 21.0	18.5	14.2	2.9	0.6
New York City, 1926	58.7	10.3	9.4	21.6	19.1	16.2	2.5	1.3
4 large Pennsylvania cities, 1926	74.4	3.0	10.3	12.3				
Chicago and Cook County, 1926	48.5	11.4	20.4	[1] 19.7	16.0	12.5	3.6	2.2
New York up-State cities over 100,000, 1926	58.1	7.2	6.4	28.3	24.7	8.1	3.6	.7
Cleveland, 1919	26.2	15.9	21.5	[1] 36.4	27.7	4.9	8.4	[2]
St. Louis, 1923–24	28.0	5.0	20.4	46.6	39.2	[3]	7.4	.9
Baltimore, 1928	25.2	5.8	15.6	53.4				
Milwaukee, 1926	17.4	0.0	19.1	[1] 63.5	38.2	.8	24.3	1.0
Cincinnati, 1925–26	54.6	12.3	7.7	25.4	16.6	6.7	8.8	1.5
Jackson County, Mo., 1923–24	50.6	2.1	23.9	23.4	17.0	[3]	6.4	.6
New York cities under 100,000, 1926	43.4	9.4	10.8	36.4	31.9	8.5	4.5	1.5
Buchanan County, Mo., 1923–24	60.4	0.0	18.3	21.3	19.7	[3]	1.6	.6
8 Illinois counties, 60–85 per cent urban, 1926	20.1	15.7	31.2	24.0	20.7	6.9	3.3	.3
7 Illinois counties, 35–59 per cent urban, 1926	28.1	12.5	32.5	26.9	22.0	6.9	4.9	1.3
7 Missouri counties, 40–70 per cent urban, 1922–1924	12.1	2.4	43.2	42.3	33.3	[4]	9.0	1.5
11 Missouri counties, 30–39 per cent urban, 1922–1924	16.0	1.3	39.1	43.6	34.6	[4]	9.0	1.8
18 Missouri counties, under 30 per cent urban, 1922–1924	4.2	6.2	46.6	43.0	35.5	[4]	7.5	1.5
Rural New York State, 1926	15.7	18.2	17.0	49.1	42.3	9.3	6.8	1.2
2 rural Illinois counties, 1926	24.3	15.2	24.2	36.3	30.2	3.0	6.1	0.0

[1] Includes a few cases as to which the statistics do not indicate the method by which guilt was established.
[2] Data not available.
[3] Data not available. In St. Louis, Jackson County, and Buchanan County as a group, the percentages were: Guilt established, 33.19; guilty on plea, all pleas, 26.6; guilty on plea, lesser offense, 7.8.
[4] Data not available. In the 36 rural and partially urban counties of Missouri as a group, the percentages were: Guilt established, 43; guilty on plea, all pleas, 34.2 guilty on plea, lesser offense, 6.6.

TABLE XIV.—*Disposition of criminal cases by grand jury*

	Number of cases entering grand jury	Per cent eliminated			Per cent indicted
		No-billed	Other dispositions and pending	Total eliminated	
New York City, 1925	8,005	28.3	1.5	29.8	70.2
New York City, 1926	3,366	25.0	.1	25.1	74.9
4 large Pennsylvania cities, 1926	8,049	11.1	.6	11.7	88.3
Chicago and Cook County, 1926	[1] 4,890	28.4	2.3	30.7	69.3
New York, up-State cities over 100,000, 1925	1,177	13.2	2.9	16.1	83.9
New York, up-State cities over 100,000, 1926	672	13.4	3.8	17.2	82.8
Cleveland, 1919	3,236	21.5		21.5	78.5
St. Louis, 1923–24	1,075	[2] 7.0		7.0	93.0
Baltimore, 1927	1,672	6.4	1.7	8.1	91.9
Baltimore, 1928	1,682	4.2	3.5	7.7	92.3
Milwaukee, 1926 [3]					
Cincinnati, 1925–26	656	26.7	.5	27.2	72.8
Jackson County (Kansas City), 1923–24	839	[2] 4.2		4.2	95.8
Pennsylvania exclusive of 4 large cities, 1926	12,480	15.2	3.3	18.5	81.5
New York cities, 5,000–100,000, 1925	1,228	18.7	1.6	20.3	79.7
New York cities, 5,000–100,000, 1926	616	14.0	2.6	16.6	83.4
Buchanan County (St. Joseph), 1923–24	119	[2] 0.0		0.0	100.0
8 Illinois counties, 60–85 per cent urban, 1926	[1] 1,179	15.0	[4] 15.4	30.4	69.6
7 Illinois counties, 35–59 per cent urban, 1926	[1] 390	15.7	[5] 13.3	29.0	71.0
7 Missouri counties, 40–70 per cent urban, 1922–1924	949	[2] 2.7		2.7	97.3
11 Missouri counties, 30–39 per cent urban, 1922–1924	1,028	[2] 1.6		1.6	98.4
18 Missouri counties, under 30 per cent urban, 1922–1924	1,188	[2] 6.5		6.5	93.5
Rural New York State, 1925	944	23.6	1.4	25.0	75.0
Rural New York State, 1926	1,106	19.1	2.4	21.5	78.5
2 rural Illinois counties, 1926	[1] 18	11.1	[5] 16.7	27.8	72.2

[1] Exclusive of original indictments.
[2] In Missouri most cases are brought to the trial court by information rather than indictment. This item includes cases no-billed by the grand jury and cases in which no information was issued by the prosecutor.
[3] In Milwaukee all cases are handled on information. All cases bound over after preliminary hearing were brought to the trial court.
[4] Consists chiefly of cases not presented and cases in which no record was found.
[5] Consists chiefly of cases in which no record was found.

TABLE XV.—*Share of prosecution, judge and jury in elimination of cases in trial court, by percentages*

	Eliminated by—			Miscellaneous dispositions and cases pending	Total eliminated	Guilt established
	Prosecution [1]	Judge [2]	Jury [3]			
	Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
New York City, 1925	2.5	12.3	9.2	4.8	28.8	71.2
New York City, 1926	1.9	12.6	9.0	6.9	30.4	69.6
4 large Pennsylvania cities, 1926	10.2	.5	30.3	4.8	45.8	54.2
Chicago and Cook County, 1926	31.2	7.0	5.5	7.2	50.9	49.1
New York up-State cities over 100,000, 1925	4.0	1.1	4.9	8.8	18.8	81.2
New York up-State cities over 100,000, 1926	6.0	.7	4.2	7.6	18.5	81.5
Cleveland, 1919	20.4	.6	9.1	7.0	37.1	62.9
St. Louis, 1923–24	10.2	3.7	8.3	[4] 8.2	30.4	69.6
Baltimore, 1927	3.2	([5])	([5])	4.9	24.8	75.2
Baltimore, 1928	3.6	([5])	([5])	3.9	22.7	77.3
Milwaukee, 1926	5.7	13.4	2.5	1.4	23.0	77.0
Cincinnati, 1925–26	6.5	0.0	9.1	7.8	23.4	76.6
Jackson County (Kansas City), 1923–24	33.7	1.1	6.1	[4] 9.6	50.5	49.5
Pennsylvania exclusive of 4 large cities, 1926	20.0	2.5	16.9	7.4	46.8	53.2
New York cities of 5,000–100,000, 1925	4.0	2.4	5.3	7.4	19.1	80.9
New York cities of 5,000–100,000, 1926	3.1	2.3	5.3	12.0	22.7	77.3
Buchanan County (St. Joseph), 1923–24	26.8	14.3	3.4	[4] 1.7	46.2	53.8
8 Illinois counties, 60–85 per cent urban, 1926	26.8	.2	3.8	25.8	56.6	43.4
7 Illinois counties, 35–59 per cent urban, 1926	21.9	2.0	6.7	24.2	54.8	45.2
7 Missouri counties, 40–70 per cent urban, 1922–1924	28.0	2.3	5.6	[4] 14.7	50.6	49.4
11 Missouri counties, 30–39 per cent urban, 1922–1924	23.3	4.3	5.3	[4] 14.3	47.2	52.8
18 Missouri counties, under 30 per cent urban, 1922–1924	18.6	11.2	7.3	[4] 15.0	52.1	47.9
Rural New York, 1925	1.4	2.1	3.4	6.2	13.1	86.9
Rural New York, 1926	4.8	2.2	6.3	12.4	25.7	74.3
2 rural Illinois counties, 1926	0.0	0.0	0.0	40.0	40.0	60.0

[1] Includes cases nolled and cases dismissed for want of prosecution.
[2] Includes cases dismissed by the judge, except dismissals for want of prosecution, and acquittals in cases tried without a jury.
[3] Includes acquittals by the jury and mistrials due to jury disagreement.
[4] The Missouri survey includes dismissals for want of prosecution and mistrials under head of "Other dispositions."
[5] Eliminations by judge and by jury totaled 16.7 per cent in 1927 and 15.2 per cent in 1928, most of which were acquittals in cases tried by the judge without a jury.

TABLE XVI.—*Disposition of criminal cases receiving jury trial*

	Cases tried by jury		Per cent of cases tried resulting in—				
	Number	Per cent of total cases entering trial court	Acquittal	Mistrial	Conviction	Conviction of offense charged	Conviction of lesser offense
New York City, 1925	903	13.1	56.0	1.5	42.5		
New York City, 1926	383	15.4	58.4	.8	40.8	26.4	14.4
Chicago and Cook County, 1926	498	9.5	56.8	1.2	42.0	37.0	5.0
New York up-State cities over 100,000, 1925	189	19.1	24.9	.5	74.6		
New York up-State cities over 100,000, 1926	73	13.1	28.8	2.7	68.5	64.4	4.1
Cleveland, 1919	595	23.4	38.2	.5	61.3		
St. Louis, 1923–24	194	19.4	42.8	([1])	57.2	50.0	7.2
Milwaukee, 1926	87	5.7	42.5	1.2	56.3	54.0	2.3
Cincinnati, 1925–26	171	35.8	23.3	2.3	74.4	61.5	12.9
Jackson County (Kansas City), 1923–24	158	19.7	31.0	([1])	69.0	62.7	6.3
New York cities, 5,000–100,000, 1925	148	15.1	31.8	3.4	64.8		
New York cities, 5,000–100,000, 1926	69	13.4	34.8	4.3	60.9	47.9	13.0
Buchanan County (St. Joseph) 1923–24	9	7.6	44.5	([1])	55.5	33.3	22.2
8 Illinois counties, 60–80 per cent urban, 1926	121	9.5	38.0	1.7	60.3	53.7	6.6
7 Illinois counties, 35–59 per cent urban, 1926	79	14.7	36.7	8.9	54.4	39.2	15.2
7 Missouri counties, 40–70 per cent urban, 1922–1924	149	16.1	34.8	([1])	65.2	54.5	10.7
11 Missouri counties, 30–39 per cent urban, 1922–1924	165	16.3	32.8	([1])	67.2	53.3	13.9
18 Missouri counties, under 30 per cent urban, 1922–1924	173	15.6	46.8	([1])	53.2	42.8	10.4
Rural New York State, 1925	98	13.8	19.4	5.1	75.5		
Rural New York State, 1926	131	15.1	39.0	3.0	58.0	54.2	3.8
2 Rural Illinois counties, 1926	2	10.0			100.0	100.0	

[1] The number of mistrials is not separately set-up in the report of the Missouri crime survey and can not be included in this table.

TABLE XVII.—*Comparison of disposition of criminal cases in England and in large American cities* [1]

	England and Wales, 1925		New York City, 1925		Chicago and Cook County, 1926		Cincinnati, 1925–26		Milwaukee, 1926	
	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
Total cases [2]	8,139	100.0	7,664	100.0	6,455	100.0	646	100.0	1,518	100.0
No-billed	96	1.2	2,262	29.5	1,388	21.5	175	27.1		
Nolled, etc	2	.02	143	1.9	1,638	25.5	31	4.8	86	5.7
Dismissed by court			684	8.9	28	.4			170	11.2
Acquitted	1,350	16.6	505	6.6	580	8.9	40	6.2	72	4.7
Miscellaneous dispositions not resulting in conviction	18	.2	66	.9	239	3.7	34	5.3	21	1.4
Convicted	6,673	82.0	4,004	52.2	2,582	40.0	366	56.6	1,169	77.0

[1] The statistics for England and Wales relate to the courts of assizes and quarter sessions, and include any indictable offenses. Those for American cities relate to the trial courts and include only felony cases.
[2] Excludes cases pending and those for which records fail to show the disposition. In New York City, cases indicted for misdemeanor and not going to the regular criminal court are also excluded.

A STATISTICAL ANALYSIS OF THE DISPOSITION OF CRIMINAL CASES IN ENGLAND AND WALES, 1925

TABLE XVIII.—*Indictable offenses tried in courts of summary jurisdiction, England and Wales, 1925* [1]

	Total in courts of summary jurisdiction	Juvenile courts	Total exclusive of juvenile courts
Persons proceeded against	49,404	12,616	36,788
Charge withdrawn or dismissed	5,460	1,206	4,254
Charge proved:			
Order made without conviction	22,720	9,477	13,243
Dismissed	4,165	2,108	2,057
Recognizance	6,487	1,408	5,079
Probation	11,428	5,440	5,988
Industrial school	507	491	16
Custody of relatives	4	3	1
Institution for defectives, etc	129	27	102
Convicted	21,224	1,933	19,291
Imprisonment	9,081	4	9,077
Police cells	114		114
Reformatory school	580	544	36
Whipping	453	448	5
Fine	10,657	903	9,754
Recognizance	76	8	68
Otherwise disposed of	263	26	237

[1] From Judicial Statistics of England and Wales, 1925, pp. 76 and 86. The statistics relate to cases finally disposed of during the year. Where the same individual was charged with more than one offense, only the offense as to which the action proceeded furthest is included. Where the same person was convicted of more than one offense, only the offense entailing the heaviest penalty is taken. The cases involved indictable offenses which may be tried by magistrates of courts of summary jurisdiction. Most of the cases were on larceny charges, 38,553 being classified as simple larceny.

TABLE XIX.—*Proceedings in indictable offenses, England and Wales, 1925* [1]

Crimes known to the police	113,986
Crimes whose perpetrators were detected, but for which proceedings are not shown [2]	21,822
Persons proceeded against	59,993
Miscellaneous dispositions	231
Proceedings in courts of summary jurisdiction:	
Discharged without assumption of power to try summarily [3]	2,224
Tried summarily [3]—	
Dismissed or charge withdrawn	5,460
Charge proved and order made without conviction [4]	22,720
Convicted	21,224
Committed for trial by court of assizes or quarter sessions	8,134
Proceedings in courts of assizes and quarter sessions: [5]	
Persons proceeded against	8,139
No bill by grand jury	96
Not prosecuted	2
Found insane on arraignment	18
Acquitted	1,350
Verdict guilty but insane	34
Convicted and sentenced	6,639

[1] From Judicial Statistics of England and Wales, 1925. The offenses included are those disposed of by the courts as indictable offenses and those, not reaching the courts, which were classified as indictable offenses by the police. Except for the first 2 items, the table is in terms of numbers of persons proceeded against rather than numbers of offenses dealt with. Where the same individual was charged with more than 1 offense, the statistics deal with the offense as to which the action proceeded furthest or, in case of conviction of more than 1 offense, with the offense involving the heaviest penalty. Cases pending disposition by the court of summary jurisdiction at the end of the year are excluded.

[2] Includes the additional crimes charged to persons proceeded against, which do not appear in the remainder of the table, and crimes for which proceedings were not instituted.

[3] Persons charged with indictable offenses may be bound over for grand jury indictment and trial in the court of assizes or quarter sessions or in certain types of offenses the court of summary jurisdiction may assume the power to try the case. Most of the indictable offenses tried summarily involve simple larceny.

[4] In such cases the offender is normally placed on probation, released on recognizance, or dismissed outright.

[5] The statistics with reference to courts of assizes and quarter sessions relate to proceedings finally disposed of during the year, regardless of whether the action originated during that year or a previous year.

TABLE XX.—*Proceedings in indictable offenses in courts of assizes and quarter sessions, England and Wales, 1925* [1]

	England and Wales (population 37,886,699) [2]	London (population 4,484,523)	County of Lancashire (population 4,927,484)	County of York (population 4,182,529)
Persons proceeded against	8,139	1,780	991	881
Not tried:				
No prosecution	2			
No bill by grand jury	96			
Found insane on arraignment	18	320	136	166
Acquitted	1,350			
Verdict guilty, but insane	34	4	2	4
Convicted and sentenced	6,639	1,447	853	711
Sentence:				
Death	30	4	5	8
Penal servitude (3 years and over)	459	107	58	49
Imprisonment (under 3 years)	4,040	796	525	428
Borstal institution	322	43	68	54
Recognizance with probation order	658	351	48	45
Recognizance without probation order	1,009	123	135	110
Other disposition	121	23	14	17
Additional offenses charged to same persons	3,041			
Additional convictions of same persons	2,352			
Further sentences imposed cumulatively	42			

[1] From Judicial Statistics of England and Wales, 1925, pp. 51, 61, 62, and 66. Only cases finally disposed of during the calendar year are included. The statistics are in terms of numbers of persons rather than numbers of offenses tried. Where the same individual was charged with more than 1 offense, the table only includes the offense as to which the action proceeded furthest. Where a person was convicted of more than 1 offense, only the offense entailing the heaviest penalty is included. The central criminal court takes the place of the court of assizes in London and is included in the table. All cases in the courts of assizes and quarter sessions are tried by jury. Large numbers of lesser indictable offenses are tried without a jury in the courts of summary jurisdiction.

[2] Population figures are for June, 1921.

TABLE XXI.—*Disposition of criminal cases in Federal District Court of Northern District of Ohio, year ending June 30, 1928* [1]

Pending at opening of year	469
Commenced during year	1,142
Total cases	1,611
Eliminated:	
Nolle prossed or discontinued	1
Acquitted by jury	12
Quashed, or dismissed, demurrer, etc	49
Total eliminated	62
Pending at end of year	520
Guilt established	1,029
On plea of guilty	986
On conviction by jury	43

[1] Prepared from Annual Report of the Attorney General of the United States, Fiscal Year Ended June 30, 1928, p. 154.

TABLE XXII.—*Disposition of felony cases in Federal District Court of Northern District of Ohio, by type of offense, year ending June 30, 1928, by number of defendants* [1]

United States Commissioner	All cases	Conspiracy, 48 per cent	Narcotic act, 16 per cent	Dyer Act, 9 per cent	Smuggling, 5 per cent	Postal laws, 4 per cent	Mann Act, 3 per cent	Theft of interstate freight, 3 per cent	Forging, 2 per cent	Embezzlement, 2 per cent	Concealing bankruptcy assets, 1 per cent	Counterfeiting, 6 per cent	Other felonies, 6 per cent
Heard on preliminary hearing	773	374	127	67	36	33	25	22	19	14	8	5	43
Dismissed	39	25	2	1	3	1	2	1	1		1		2
No disposition recorded during fiscal year	107	68	11	7	6	1	5	2	1				6
Cases brought before jury	627	281	114	59	27	31	18	19	17	14	7	5	35
No bill returned	19	11	4						2				2
No disposition recorded during fiscal year	128	81	13	5	4	7	4	1	5		2		6
Cases docketed by prosecutor	480	189	97	54	23	24	14	18	10	14	5	5	27
Nolled	1						1						
Dismissed [2]	20	13	1	1	2	2							1
Forfeited bond	1			1									
No disposition recorded during fiscal year	75	30	10	7	5	5	3	6	1	2			6
Cases brought before court	383	146	86	45	16	17	10	12	9	12	5	5	20
Plea of guilty	274	93	68	33	11	16	10	4	8	12	5	2	13
Found guilty (manner not indicated)	4	2										1	
Acquitted by jury	10	8	1									1	
No disposition recorded during fiscal year	61	31	5	9	4	1		6					5
Convicted by jury	34	12	12	3	1	0	0	2	1	0	0	1	2

[1] Prepared in the office of the National Commission on Law Observance and Enforcement from data in the Department of Justice.

[2] 1 case; defendant died after case was docketed by prosecutor.

TABLE XXIII.—*Time intervals in the disposition of cases involving major offenses*

[From beginning of action to final disposition [1]]

	Eliminated in preliminary hearing		Eliminated in grand jury		Eliminated in trial court		Guilt established	
	Number of cases	Median days	Number of cases	Median days	Number of cases	Median days	Number of cases	Median days
New York City, 1925: [2]								
New York County	------	[3]	1,406	23	906	72	2,333	36
Kings County	------	[3]	691	19	246	82	861	47
Bronx County	------	[3]	103	20	78	67	370	46
Queens County	------	[3]	108	55	124	153	204	91
Richmond County	------	[3]	35	23	29	143	89	57
New York City, 1926 [4]	4,778	3	844	16	1,634	53	888	[5] 51
Chicago and Cook Counties, 1926 [6]	5,857	11	1,348	19	2,332	113	2,560	74
New York up-State cities over 100,000, 1926 [4]	931	2	116	35	172	83	384	[5] 65
Buffalo, 1925 [2]	------	[3]	65	22	67	102	282	61
Rochester, 1925 [2]	------	[3]	31	27	16	90	149	46
Syracuse, 1925 [2]	------	[3]	19	36	4	70	125	80
St. Louis, 1923–24 [7]	401	20	------	[8]	258	[8] 95	654	52
Milwaukee, 1926 [6]	202	17	------	[8]	350	57	1,149	17
Jackson County (Kansas City), 1923–24 [7]	818	30	------	[3]	341	[8] 70	321	31
Buchanan County (St. Joseph), 1923–24 [7]	162	19	------	[9]	54	[8] 200	60	48
New York cities under 100,000, 1925 [2]	------	[3]	234	61	116	85	786	67
New York cities under 100,000, 1926 [4]	472	8	102	67	161	89	353	[5] 58
8 Illinois counties, 60–85 per cent urban, 1926 [6]	660	8	190	45	379	82	543	66
7 Illinois counties, 35–59 per cent urban, 1926 [6]	154	4	40	7	122	110	226	48
36 Missouri rural and partially urban counties, 1922–1924 [7]	269	11	------	[3]	1,109	[8] 147	1,397	53
Rural New York, 1925 [2]	------	[3]	230	72	69	83	609	67
Rural New York, 1926 [4]	206	1	238	46	298	71	570	[5] 55

[1] Time intervals are calculated from the date of arrest in the Missouri and the first New York State surveys, from arraignment before the examining magistrate in the second New York State survey, and from the entering of the complaint in the Illinois survey.
[2] Report of the Crime Commission of New York State, 1927, p. 140.
[3] Data not available.
[4] Crime Commission of New York State; report to the commission of the subcommission on statistics, 1928, pp. 105 and 106.
[5] The figure used is the weighted average of the medians for cases resulting in suspended sentence and cases resulting in death, imprisonment, or fine.
[6] The Illinois crime survey, pp. 94–99.
[7] The Missouri crime survey, p. 329.
[8] The figure used is the weighted average of the medians of the 4 groups into which cases eliminated in the trial court are divided in the report.
[9] No cases eliminated by the grand jury or by failure of the prosecutor to issue an information.

TABLE XXIV.—*Time intervals in the disposition of cases involving major offenses*

[From beginning of action to disposition in preliminary hearing [1]]

	Eliminated in preliminary hearing		Eliminated in grand jury		Eliminated in trial court		Guilt established	
	Number of cases	Median days	Number of cases	Median days	Number of cases	Median days	Number of cases	Median days
New York City, 1925	------	[2]	2,335	1	1,508	1	3,495	1
New York City, 1926	4,778	3	844	1	1,634	1	888	[3] 1
Chicago and Cook County, 1926	5,857	11	1,442	2	1,502	3	1,880	2
New York up-State cities over 100,000, 1925	------	[2]	184	1	167	1	725	1
New York up-State cities over 100,000, 1926	931	2	116	2	172	1	384	[3] 2
St. Louis, 1923–24	401	20	------	[2]	------	[2]	------	[2]
Milwaukee, 1926	202	17	------	[4]	350	4½	1,151	2
Jackson County (Kansas City), 1923–24	818	30	------	[2]	------	[2]	------	[2]
Buchanan County (St. Joseph), 1923–24	162	19	------	[4]	------	[2]	------	[2]
New York cities under 100,000, 1925	------	[2]	249	1	179	1	764	1
New York cities under 100,000, 1926	472	8	102	9	161	11	353	[3] 7
8 Illinois counties, 60–85 per cent urban, 1926	660	8	324	3	380	3	408	3
7 Illinois counties, 35–59 per cent urban, 1926	154	4	61	2	67	4	109	2
36 rural and partially urban counties, Missouri, 1922–1924	269	11	------	[2]	------	[2]	------	[2]
Rural New York, 1925	------	------	234	1	83	1	569	1
Rural New York, 1926	206	1	238	1	298	1	570	[3] 1

[1] Time intervals are calculated from the date of arrest in the Missouri and the first New York State surveys, from arraignment before the examining magistrate in the second New York State survey, and from the entering of the complaint in the Illinois survey.
[2] Data not available.
[3] The figure used is the weighted average of the medians for cases resulting in suspended sentence and cases resulting in death, imprisonment, or fine.
[4] No cases eliminated by grand jury or failure to issue an information.

TABLE XXV.—*Time intervals in the disposition of cases involving major offenses*

[From disposition in preliminary hearing to grand jury disposition]

	Eliminated in grand jury		Eliminated in trial court		Guilt established	
	Number of cases	Median days	Number of cases	Median days	Number of cases	Median days
New York City, 1925:						
New York County	1,409	21	988	15	2,361	11
Kings County	691	19	252	25	819	18
Bronx County	102	20	107	24	365	13
Queens County	110	53	159	53	198	28
Richmond County	34	23	37	46	79	30
New York City, 1926	844	15	1,034	13	888	[1] 12
Chicago and Cook Counties, 1926	1,348	15	1,491	16	1,875	13½
New York up-State cities over 100,000, 1926	116	33	172	58	384	[1] 30
Buffalo, 1925	59	21	68	31	243	34
Rochester, 1925	37	23	22	40	152	25
Syracuse, 1925	25	33	21	45	125	32
St. Louis, 1923–24	-------	([2])	-------	([2])	-------	([2])
Milwaukee, 1926	-------	([3])	306	9	1,151	8
Jackson County (Kansas City), 1923–24	-------	([2])	-------	([2])	-------	([2])
Buchanan County (St. Joseph), 1923–24	-------	([3])	-------	([2])	-------	([2])
New York cities under 100,000, 1925	247	61	184	59	767	37
New York cities under 100,000, 1926	102	58	161	41	353	[1] 40
8 Illinois counties, 60–85 per cent urban, 1926	128	50	363	41	398	38
7 Illinois counties, 35–59 per cent urban, 1926	40	65	64	62	107	42
36 rural, and partially urban counties, Missouri, 1922–1924	-------	([2])	-------	([2])	-------	([2])
Rural New York, 1925	232	62	89	53	592	44
Rural New York, 1926	238	45	298	34	570	[1] 37

[1] The figure used is the weighted average of the medians of cases resulting in suspended sentence and cases resulting in death, imprisonment, or fine.
[2] Data not available.
[3] No cases eliminated by grand jury or failure to issue an information.

TABLE XXVI.—*Time intervals in the disposition of cases involving major offenses*

[From grand jury disposition to arraignment in trial court]

	Eliminated in trial court		Guilt established	
	Number of cases	Median days	Number of cases	Median days
New York City, 1925:				
New York County	956	2	2,236	2
Kings County	266	1	854	1
Bronx County	108	3	371	3
Queens County	160	6	205	2
Richmond County	39	6	84	5
New York City, 1926	1,034	2	888	[1] 1
Chicago and Cook County, 1926	2,569	25	2,571	25
New York up-State cities over 100,000, 1926	172	5	384	[1] 3
Buffalo, 1925	69	3	280	2
Rochester, 1925	15	45	152	9
Syracuse, 1925	18	8	126	5
St. Louis, 1923–24	218	[2] 30	688	24
Milwaukee, 1926	-------	([3])	-------	([3])
Jackson County (Kansas City), 1923–24	297	[2] 14	215	12
Buchanan County (St. Joseph), 1923–24	46	[2] 30	36	19
New York cities under 100,000, 1925	174	4	780	3
New York cities under 100,000, 1926	161	13	353	[1] 5
8 Illinois counties, 60–85 per cent urban, 1926	-------	([3])	-------	([3])
7 Illinois counties, 35–59 per cent urban, 1926	-------	([3])	-------	([3])
36 rural and partially urban counties, Missouri, 1922–1924	703	[2] 43	1,122	20
Rural New York, 1925	84	6	589	4
Rural New York, 1926	298	5	570	[1] 3

[1] The figure used is the weighted average of the medians for cases resulting in suspended sentence and cases resulting in death, imprisonment, or fine.
[2] The figure used is the weighted average of the medians of the 4 groups into which cases eliminated in the trial court are divided in the report.
[3] Data not available.

TABLE XXVII.—*Time intervals in the disposition of cases involving major offenses*

[From arraignment in trial court to final disposition in trial court]

	Eliminated in trial court		Guilt established	
	Number of cases	Median days	Number of cases	Median days
New York City, 1925:				
New York County	970	47	2,410	19
Kings County	249	41	587	15
Bronx County	68	30	371	22
Queens County	124	71	204	41
Richmond County	28	123	89	31
New York City, 1926	1,634	35	888	[1] 27
Chicago and Cook County, 1926	2,307	60	2,508	28
New York up-State cities over 100,000, 1926	173	21	384	[1] 9
Buffalo, 1925	64	48	280	17
Rochester, 1925	13	1	149	4
Syracuse, 1925	4	1	125	24
St. Louis, 1923–24	97	[2] 44	558	10
Milwaukee, 1926	300	11	1,151	2
Jackson County (Kansas City), 1923–24	263	[2] 30	216	23
Buchanan County (St. Joseph), 1923–24	38	[1] 123	52	14
New York cities under 100,000, 1925	114	15	783	10
New York cities under 100,000, 1926	161	25	353	[1] 1
8 Illinois counties, 60–85 per cent urban, 1926	354	40	545	23
7 Illinois counties, 35–59 per cent urban, 1926	122	65	226	19
36 rural and partially urban counties, Missouri, 1922–1924	415	[1] 97	870	15
Rural New York, 1925	66	24	611	2
Rural New York, 1926	298	22	570	[1] 5

[1] The figure used is the weighted average of the medians for cases resulting in suspended sentence and cases resulting in death, imprisonment, or fine.

[2] The figure is the weighted average of the medians of the 4 groups into which cases eliminated in the trial court are divided in the report.

TABLE XXVIII.—*Mortality table of city misdemeanor cases, Cleveland, 1919–20*

[Taken from the Cleveland survey]

	Number of cases	Number of cases remaining	Per cent of cases	Per cent of cases remaining
Total	1,832		100.00	
Unknown disposition	4	1,828	.22	99.78
Discharged	232	1,596	12.66	87.12
"No papers"	27	1,569	1.47	85.65
Nolle prosequi	141	1,428	7.70	77.95
Dismissed for want of prosecution				
Other dispositions; no sentence	8	1,420	.44	77.51
Found guilty—total	1,420		77.51	
Plead guilty	813	607	44.38	33.13
Plead not guilty	598	9	32.64	.49
Plea unknown	9		.49	

EXECUTION, SUSPENSION, AND MITIGATION OF SENTENCES	Number	Per cent
Total found guilty	1,420	
Sentence unknown	8	
Sentence known	1,412	100.00
Sentence executed [1]	768	54.39
Sentence wholly suspended	386	27.34
Sentence mitigated	258	18.27

[1] "Sentence executed" in this table * * * means sentences which the trial court itself did not suspend or mitigate. It does not mean that the number of sentences indicated were necessarily carried out. The figures in these tables were taken from court records and have not taken into account any action of the executive authorities in the exercise of executive clemency, such as pardon or commutation, or of the acts of paroling prisoners from penal institutions.

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TABLE XXIX.—*Mortality table of State misdemeanor cases, Cleveland, 1919–20*

[Taken from the Cleveland survey]

	Number of cases	Number of cases remaining	Per cent of cases	Per cent of cases remaining
Total	1,953		100.00	
Unknown disposition	20	1,933	1.02	98.98
Discharged	308	1,625	15.77	83.21
"No papers"	19	1,606	0.97	82.24
Nolle prosequi	89	1,517	4.57	77.67
Dismissed for want of prosecution	87	1,430	4.45	73.22
Other dispositions; no sentence	8	1,422	0.41	72.81
Found guilty—total	1,422		72.81	
Plead guilty	812	610	41.58	31.23
Plead not guilty	577	33	29.54	1.69
Plea unknown	33		1.69	

EXECUTION, SUSPENSION, AND MITIGATION OF SENTENCES	Number	Per cent
Total found guilty	1,422	
Sentence unknown	14	
Sentence known	1,408	100.00
Sentence executed	743	52.77
Sentence wholly suspended	372	26.42
Sentence mitigated	293	20.81

TABLE XXX.—*Disposition of cases in municipal court of Cincinnati according to type of charge, January 1–June 30, 1929*

[From analysis of 11,180 misdemeanor cases in municipal court of Cincinnati, made and published by the Cincinnati Bureau of Government Research]

Disposition	Total		Petit larceny		Assault and battery		Embezzlement and fraud		Weapons (carrying and possession)		Sex offenses (except rape)		Family and children		Violating liquor laws		Drunkenness		Disorderly conduct		Gambling	
	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
Total	11,180	100	398	100	620	100	142	100	76	100	1,902	100	234	100	1,669	100	1,657	100	3,825	100	657	100
Discharged	2,298	20.6	96	24.1	291	47.0	70	49.3	13	17.1	66	3.5	111	47.5	733	43.9	70	4.3	721	18.9	127	19.3
Dismissed for want of prosecution	119	1.1	10	2.5	21	3.4	9	6.3	2	2.6	8	.5	6	2.6	23	1.4	4	.2	36	.9	0	.0
Other disposition; no sentence	222	2.0	3	.8	5	.7	3	2.1	4	5.3	8	.5	1 56	23.9	12	.7	2 26	1.6	3 104	2.7	1	.2
Found guilty	8,541	76.3	289	72.6	303	48.9	60	42.3	57	75.0	1,820	95.5	61	26.0	901	54.0	1,557	93.9	2,964	77.5	529	80.5
EXECUTION, SUSPENSION, AND MITIGATION OF SENTENCES																						
Found guilty	8,541	100	289	100	303	100	60	100	57	100	1,820	100	61	100	901	100	1,557	100	2,964	100	529	100
Costs suspended	3,254	38.1	33	11.4	85	28.0	20	33.3	10	17.5	355	19.5	19	31.0	21	2.3	904	58.1	1,430	48.2	377	71.3
Fine, sentence, or both suspended	158	1.8	4	1.4	7	2.3	2	3.3	4	7.0	5	.3	3	5.0	2	.2	31	2.0	93	3.1	7	1.3
Costs	1,193	14.0	18	6.3	47	15.5	5	8.4	4	7.0	342	18.8	0	0	5	.6	228	14.6	462	15.6	82	15.5
Fined	2,416	28.5	133	46.0	99	32.8	17	28.4	36	63.2	140	7.7	22	36.0	870	96.6	179	11.5	857	29.0	63	11.9
Fined and sentenced	278	3.2	94	32.5	57	18.8	16	26.6	2	3.5	19	1.0	14	23.0	0	.0	57	3.7	19	.6	0	.0
Sentenced	289	3.3	7	2.4	8	2.6	0	.0	1	1.8	6	.3	3	5.0	3	.3	158	10.1	103	3.5	0	.0
Sent to clinic	953	11.1									4 953	52.4										

1 56 cases transferred court of domestic relations.
2 11 cases ordered to leave town.
3 55 cases ordered to leave town.
4 To clinic for treatment.

BIBLIOGRAPHY OF PROSECUTION

INCLUDING REFERENCES TO GRAND JURY
LEGAL AID, PUBLIC DEFENDER
AND RELATED SUBJECTS

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CONTENTS

EXPLANATORY NOTE

This bibliography is not an exhaustive compilation of all material available on the subject of prosecution; it is rather a working apparatus designed to serve the student who is interested in the immediate aspects of the problem, and in the historical, formative factors in so far as they are still operative in the American situation. It comprises about 500 separate titles; some of these are necessarily duplicated under several headings—in which case the main or complete bibliographic entry is put under the heading that seems most pertinent, with abbreviated entries elsewhere. For example, the several leading crime surveys are given full entry in section 3*b* (crime commissions, surveys, etc.), and referred to again, in abbreviated form, under section 4*b*3 (case mortality statistics) and other relevant places.

In general, references to legal digests and encyclopedias, to treatises on procedure, and to popular books and magazine articles, are not included.

J. L.

LIST OF ABBREVIATIONS

A B A Jour	American Bar Association Journal.
A B A Rept	American Bar Association Reports.
A L I Code	American Law Institute. Code of Criminal Procedure.
Am L Reg	American Law Register.
Am L Rev	American Law Review.
Am Pol Sci Assn	American Political Science Association.
Am Pris Assn Proc	Proceedings of the American Prison Association.
Am Rev	American Review.
Amer Acad Polit and Social Science	American Academy of Political and Social Science, Philadelphia.
Ann Rept Amer Hist Assn	Annual Report of the American Historical Association.
Ark B A	Arkansas Bar Association.
Bi-Mo L Rev	Bi-monthly Law Review.
B U L Rev	Boston University Law Review.
Cal B A	California Bar Association.
Calif L Rev	California Law Review.
Can B A	Canadian Bar Association.
Can B R	Canadian Bar Review.
Case & Com	Case and Comment.
Cent L J	Central Law Journal.
Colum L Rev	Columbia Law Review.
Conn B A	Connecticut Bar Association.
Cornell L Q	Cornell Law Quarterly.
Dakota L Rev	Dakota Law Review.
Ga B A	Georgia Bar Association.
Geo L J	Georgetown Law Journal.
Harv L Rev	Harvard Law Review.

Ia L Rev	Iowa Law Review.
Idaho S B A	Idaho State Bar Association.
Ill L Rev	Illinois Law Review.
Ill S B A	Illinois State Bar Association.
Ind L J	Indiana Law Journal.
Ind S B A	Indiana State Bar Association.
J Am Jud Soc	Journal of the American Judicature Society.
J Crim L	Journal of the American Institute of Criminal Law and Criminology.
Just P	Justice of the Peace.
Ky L J	Kentucky Law Journal.
L T	Law Times.
La Hist Q	Louisiana Historical Quarterly.
La S B A	Louisiana State Bar Association.
Law & Bank	Lawyer and Banker.
Law Q Rev	Law Quarterly Review.
Law Soc J	Law Society Journal.
Marq L Rev	Marquette Law Review.
Mass L Q	Massachusetts Law Quarterly.
Md S B A	Maryland State Bar Association.
Me L R	Maine Law Review.
Mich L Rev	Michigan Law Review.
Mich S B J	Michigan State Bar Journal.
Minn L Rev	Minnesota Law Review.
Minn S B A	Minnesota State Bar Association.
Miss L J	Mississippi Law Journal.
Mo B A	Missouri Bar Association.
N Am Rev	North American Review.
Nat Mun Rev	National Municipal Review.
N C L Rev	North Carolina Law Review.
N J L J	New Jersey Law Journal.
Notre Dame Law	Notre Dame Lawyer.
N Y Co L A	New York County Lawyers Association.
N Y L Rev	New York Law Review.
N Y S B A	New York State Bar Association.
N Y U L Rev	New York University Law Review.
Ohio L B	Ohio Law Bulletin and Reporter.

Oreg L Rev	Oregon Law Review.
Penn B A Q	Pennsylvania Bar Association Quarterly.
Philippine L J	Philippine Law Journal.
Pcl Sci Q	Political Science Quarterly.
So Calif Rev	Southern California Law Review.
So L Q	Southern Law Quarterly.
Sol J	Solicitors' Journal and Weekly Reporter.
St John's L Rev	St. John's Law Review.
St Louis L Rev	St. Louis Law Review.
Temp L Q	Temple Law Quarterly.
Tex B A	Texas Bar Association.
Tex L Rev	Texas Law Review.
Tul L Rev	Tulane Law Review.
U Pa L Rev	University of Pennsylvania Law Review.
Va L Reg	Virginia Law Register.
Va L Rev	Virginia Law Review.
W Va L Q	West Virginia Law Quarterly.
Wash S B A	Washington State Bar Association.
Wis S B A	Wisconsin State Bar Association.
Yale L J	Yale Law Journal.

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Prosecutors' Salaries: p. 567–8
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LOCAL

Baltimore

BALTIMORE CRIMINAL JUSTICE COMMISSION

Annual reports and quarterly bulletins contain case mortality tables. The report for 1930 (p. 3ff) has comparative figures for Baltimore, Philadelphia, and Washington; also, in part, for Allegheny County, Pa. (incl. Pittsburgh). Mimeographed.

Cleveland

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ILLINOIS CRIME SURVEY.

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p. 125–128: Case mortality and the prosecutor
p. 270–345: A statistical interpretation of the criminal process, by C. E. Gehlke
p. 543–47: Mortality of cases in St. Louis City and Jackson County [Oct. 1, 1923/4] Supplemented for 1925/6 by Jamison, below.

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p. 146–47: The use of the power of *nolle prosequi*.
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5 (b) General and Miscellaneous

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Indictments and informations, p. 130–32

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5 (e) INDICTMENT AND INFORMATION

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6. LEGAL AID. JUSTICE AND THE POOR

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