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POLICE SCIENCE



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SOME PROBLEMS REGARDING MURDER DETECTION

HANS VON HENTIG†

The battle formation in the fight against crime is a four-line echelon: the front line consists of investigation, while the three supporting lines are criminal procedure, sentence, and execution. These last three proceedings are ruled by fixed regulations and have been methodically developed through the centuries. Detection to the contrary, has been singularly neglected. It has been left growing wild. There has been neither a systematic and teachable transmission of the many experiences made by skillful experts, nor has a science of detection been evolved.

The selective mechanism of criminal law runs neutral, as soon as the investigating agencies do not supply it with living material. Practically all validity and efficacy of the law and its periodical oscillations from mild to rough and from rough to mild depend upon one sole presumption: detection. This statement seems evident, and the only astonishing thing is the silence which prevails about detection, its results, and its failures.¹ The great departments of

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¹ It means silence to me, if assertions are as contradictory as the following: "There is a very interesting factor in connection with Mr. Hoover's paper, and that is that the police are highly successful in catching most of the offenders." Mr. Ewing Cockerell, U. S. Federation of Justice, Warrensburg, Missouri (Pro-

criminal investigation sometimes do not hesitate to point at the inertia, the weaknesses, and the chronic bad crops of the administration of criminal justice. All these objections can easily be verified by statistics of previous convictions and previous paroles. The official statistics discuss these defects frankly.² But ought not detection likewise assume its share in the improvability of all the crime combating agencies?

It has been said that the grave hides the mistakes of the medical men. But what is it then that hides the errors and mistakes of the bureaus of investigation? They have the humanly understandable interest of a certain publicity, if success has crowned their efforts. They have the humanly understandable interest, as well, not to exhibit the accidents of misfortune, blunder, or miscarriage. This wish may account for the refusal of aids offered by independent sources, which at times have been complained of.³ And as they, they alone, dispose of the facts and their interpretation, so they order as well the final disposal of the crimes that have been reported to them.

Science is to fill this gap, and science shall fill it. The constructive and necessary criticism, now directed at the deficiencies of the law, the judges, of the parole boards and the prison practices, ought to be extended to the work of the detective bureaus. This examination will be a sound corrective to the backward agencies, an acknowledging incentive to the many able or hard working chiefs, and a pavement for future reforms and progressive developments.

We could attempt to arrive at the "mortality" rate of a single

ceedings of the Attorney General's Conference on Crime, Washington, 1935, p. 75). Mr. Hoover's assertion was: "I might state that the conviction record of the Bureau of investigation for the last year was approximately 94%. In other words, only about six men out of every hundred who were tried, escaped conviction." *Ibid.* p. 27. On the other hand Professor Thorsten Sellin stated: "In 1933 there were probably a minimum of 1,300,000 serious crimes known to the police of this country. In three-fourths of these crimes no one was brought to justice." *Ibid.* p. 381.

² "There is a wide-spread dissatisfaction with the administration of criminal justice in this country. It has been felt for a long time, that too many guilty offenders escape merited punishment. The defects of criminal justice have inspired numberless books, magazine and newspaper articles and speeches." *Judicial Criminal Statistics for 1934* (Washington, 1936) at p. 1.

³ "Unwilling and unable to avail itself of the inventions and processes of police science, the detective bureau had fallen far behind in the adoption and application of new methods of detection and judicial proof. Due to a curious psychology it went so far as consistently to refuse the use of such aids even when extended from independent sources. This reluctance to experiment with the new devices must be overcome, before signal results can be expected." Bruce Smith, *Chicago Police Problems*, New York, 1934, page 33.

crime or a selected group of so-called serious crimes,⁴ but such data are, and remain, rather incomplete. In addition to the absence of a standard to discern what is the relation of actual crimes and reported crimes, the Census Bureau has no statistics on the numerous cases eliminated by the preliminary hearing, by the grand jury, or by the prosecutor's refusal to file an information.⁵

The Judicial Criminal Statistics for the year 1934 present an incomplete but nevertheless not quite useless summary of procedural dispositions.⁶ Twenty-six "major" offenses and twenty-five states are comprehended by these statistics.

TABLE 1
PROCEDURAL DISPOSITIONS (1934)

	<i>Number</i>	<i>Percentage</i>
Defendants before the court in 25 states.....	157,910	100.0
Cases pending at end of year.....	17,982	11.4
Defendants disposed of during year.....	139,928	88.6
Defendants disposed of during year.....	139,928	100.0
Disposed of without conviction.....	42,563	30.4
Convicted of offense charged.....	92,911	66.4
Convicted of lesser offense.....	4,454	3.2

The writer has reckoned out the corresponding relations in two groups of federal offenses: the violations of liquor laws and drug laws.⁷ It must be borne in mind that, in general, 11-12% of all defendants are not disposed of during one year. A certain addition therefore has to be made to the cases disposed of without conviction, and a certain subtraction of cases belonging to the preceding year.

TABLE 2
PROCEDURAL OUTCOME OF OFFENSES AGAINST LIQUOR LAWS
AND DRUG LAWS—PERCENTAGES (1934)

	<i>Violations of</i>	
	<i>Liquor Laws</i>	<i>Drug Laws</i>
Total defendants disposed of.....	100.0	100.0
Disposed of without conviction.....	43.1	16.1
Found guilty of offense charged.....	56.2	83.7
Found guilty of lesser offense.....	0.7	0.2

⁴ Can one consider "major" offenses not taken to be such by public opinion? "In many cities," says the Judicial Criminal Statistics for 1934, at p. 4, "there is a prejudice against the enforcement of liquor, gambling and prostitution laws, which undoubtedly is reflected in the decisions of the judges and jurymen."

⁵ Judicial Criminal Statistics for 1934, at p. 3.

⁶ *Ibid.* p. 3.

⁷ Figures to be found in Judicial Criminal Statistics for 1934, at p. 30. Both violations of liquor and drug laws show an exceptionally high rate of defendants who pleaded guilty: 82.4% in drug laws and 82.2% in liquor laws. *Ibid.* p. 15.

Here again it is quite obvious that the stated number of individuals violating liquor laws and drug laws in 25 states⁸ does not reach, by far, real conditions. Innumerable cases are not known or are not reported, a further indeterminate number is eliminated by the preliminary hearing, or by the prosecutor's refusal to file an information. Thus the defendants "disposed of" represent a vanishing minority.⁹

It can hardly be just, therefore, to derive a so-called conviction record from the very last stage of judicial proceedings, the trial. There is a great number of preliminary dispositions, founded on facts or on law, which eliminate suspected or non-suspected, defendants or non-defendants. The individuals who go to trial represent a diminutive sediment, one which has been boiled down—and it can be boiled down at will—by the most diverse proceedings and activities. No wonder there is a large proportion of guilty pleas—for the simple reason that the guilty plea is the principal reason for bringing such defendants to trial.¹⁰ Very often it takes the place of good investigation work. Eighty-two per cent of the defendants convicted for forgery, auto theft, burglary, larceny and embezzlement pleaded guilty in 1934.¹¹ The average of 26 "major" offenses was 75.8%. Parking violations head the enumeration with 99.0%. On the other hand, no more than 42.0% of the individuals charged with murder pleaded guilty. Unfortunately we have no data as to

⁸ "The area covered by this report contains approximately 42.8% of the population." *Judicial Criminal Statistics for 1934*, at p. 1. As Rhode Island and Vermont are excluded from the analysis, 25 states remain of a total of 27. The percentage therefore remains slightly under 40% of the whole population.

⁹ It is critical to try a rough estimation, but the writer believes that no more than 2-4% of convictions would be left, if we could enlarge the "partial" insight (*Judicial Criminal Statistics*, at p. 3) into a complete and thorough one. By obvious reasons such a task is beyond human power.

¹⁰ The writer has discussed the whole problem at length in former years. See "Das Leugnen," *Schweizerische Zeitschrift für Strafrecht* (1937) 201-11; "Das Geständnis," *ibid.* (1929) 23-45; "Zur Psychologie der Ausrede," *Festschrift für Gustav Aschaffenburg* (Heidelberg, 1926), 97-106. Very instructive is the recent statement of Dr. W. N. East, "Medical Aspects of Crime" (London, 1936) at p. 369, that of 200 sane murderers 48.5% confessed; of 300 insane murderers, 65.0%. The high rate in insane murderers is probably due to the considerable proportion of depressives and of the patients suffering from illusions. Whoever believes or is believed to be in self-defense "admits" but does not plead guilty, nor does he intend to do so.

¹¹ *Judicial Criminal Statistics for 1934*, at p. 15: "Pleas of guilty are more numerous in offenses against property than in offenses against the person." That the plea of guilty is mainly a measure of defense is shown by the instance of forgery. Forgery has the high rate of pleading guilty of 88%. The result is that only 44.6% of the defendants sentenced for forgery are sent to state prisons or reformatories. In 32.4% of all cases of forgery the court arrived at probation or a suspended sentence with or without supervision. *Judicial Criminal Statistics for 1934*, at p. 91.

how many negroes were among the 367 murderers pleading guilty in 25 states.

If the lack of data prevents us from proceeding further and if we desire to obtain more than a "partial" insight, the crime of murder presents the opportunity to approach closer the actual conditions that underlie the subsequent police investigations and judicial proceedings. Murder is not only a legal abstraction but a medical phenomenon. We possess mortality statistics, and if these statistics could be compiled in the ideal manner every murder would stand out as one death caused by illegal interference. It would not be difficult to trace this violent death through to the rate of convictions for murder. In general, one conviction would correspond to one death occurring under special circumstances.¹²

The mortality figures for homicide are available for the whole country after Texas entered in 1933 as a full registration state.¹³ The figures of convictions for homicide are only given for 25 states; these areas contain approximately 40% of the total population. It is doubtful that we come very close to the truth by adding to these figures 60% more convictions, because other powerful forces interfere, such as age distribution, sex ratio, and many other factors. Nevertheless the following table will prove serviceable for comparative purposes:

TABLE 3
HOMICIDE AS DEATH CAUSE AND CONVICTIONS
FOR HOMICIDE (1934)

Cases of death by homicide ¹⁴	12,055
Convictions for homicide ¹⁵ (estimation) ¹⁶	3,659

The conviction rate would thus be 30.2% of all cases in which the death cause "homicide" is registered by the mortality statistics.¹⁷

¹² Complete conformity is prevented by the fact that several individuals can be involved in one homicide, and that more than one person can be murdered by one perpetrator.

¹³ Mortality Statistics for 1934 (Washington, 1936).

¹⁴ *Ibid.* p. 16.

¹⁵ Figures of convictions for murder and manslaughter in Judicial Statistics for 1934, at p. 14, have been added.

¹⁶ To the 1,523 convictions for murder and manslaughter in 25 states, 60% have been added to arrive at an estimate for the whole country.

¹⁷ A few hundred cases of justifiable homicide are not followed by trials and have to be subtracted. They tend to increase the success percentage slightly. Their number cannot be established as far as private persons are concerned. Killings by police officers in self-defense or on similar occasions, in strike riots, killings of rioting prisoners or during the subsequent man hunt can be traced fragmentarily. So on Memorial Day, 1937, ten strikers were killed by the Chicago

The same result is attained by comparing all homicide deaths and the reported arrests for homicide.

TABLE 4
HOMICIDE AS DEATH CAUSE AND ARRESTS FOR
HOMICIDE (1934)

Cases of death by homicide.....	12,055
Arrests for homicide ¹⁸ (estimation).....	13,000

The arrest figures of the Uniform Crime Reports do not clarify the situation. No police expert need be told that ten and more arrests are not uncommon in one murder case. The paradoxon is even admissible: the less the murderer is known, the more the number of arrests. Figures of arrests would only be useful if they were compiled according to the number of murder cases investigated.

The comparison of deaths by homicide and the number of convictions for homicide (Table 3) deserves more thorough and more serious consideration. The number of convictions is solidly established, although it went through proceedings of an estimation. The numerical foundation provided by 25 states is sound. But the second ingredient of the comparison, the deaths caused by homicide, cannot escape the most reasonable doubts.

Murder seeks concealment. With rare exceptions the fact of a death cannot be concealed. The motives and causes of violent death, however, might be obscured or hidden. A few kinds of homicide do not escape widest publicity. They frequently occur in public streets or in public houses. They are often featured by the press and, in gang killings, by the fighting gangs themselves, in the manner of a war bulletin.

Bruce Smith¹⁹ has published figures in such cases. A summary of his figures is presented in the following table, which indicates a very low conviction rate:

Police. By reading through the Roll of Honor of the New York police force we meet 14 people killed by officers on duty. Annual Report (1936) 73-84.

¹⁸ Uniform Crime Reports, Vol. 5 (Washington, 1935) p. 28.

¹⁹ Smith, B., Chicago Police Problems (1934) p. 6.

TABLE 5
GANG MURDERS AND DISPOSITION
(CHICAGO, 1925-1933)

Gang murders	396
Unsolved	352
No conviction	40
Convicted	4

PERCENTAGES

Gang murders	100.0
Unsolved	88.9
No conviction	10.1
Convicted	1.0

The validity of all death figures, caused by homicide is open to question from another angle. Brearley²⁰ has emphasized how these figures come about and how far they correspond to reality. He directs our attention to the psychology and sociology of the death certificate. It is usually prepared within a few hours in order that the undertaker may be permitted to move the body. Moreover, physicians do not like to testify in court. "Many certificates, therefore, that might be reported as homicides are actually stated to be accidents. Other terms used to smooth over the situation temporarily are: 'probably an accident,' 'gunshot wound of unknown origin,' 'unknown cause,' 'violent death,' 'fractured skull,' etc. In such cases letters of inquiry from the bureau of vital statistics often remain unanswered." Brearley's assumptions are strongly supported by a glance at the statistics of accidents in the latest mortality statistics. The "ill-defined" and "not specified or unknown" causes of death alone surpass by far the homicide figures.

TABLE 6
MORTAL ACCIDENTS²¹ (1937)

Accidental deaths	101,139
Accidental mechanical suffocation.....	1,124
Traumatism by firearms	3,023
Traumatism by cutting or piecing instruments	1,254
Traumatism by fall	23,828
Accidental absorption of poisonous gas	1,695
Poisoning by food	738

²⁰ Brearley, H. C., *Homicide in the United States (1932) 13 et seq.*

²¹ *Mortality Statistics (Washington, 1936) pp. 16, 17.*

No doubt that among these 101,139 deadly accidents and among the 20,929 deaths by ill-defined and unknown causes an undetermined but considerable number of homicides is hidden.

The same holds true for the 18,828 cases of suicide. It is further evident that among the enormous number of 1,243,952 deaths from "natural causes"²² in 1934 there would be a considerable number to whom this deduction applies. The following table gives a short summary of the main death causes in which the ambiguity of malady symptoms is conspicuous.

TABLE 7

AMBIGUOUS NATURAL DEATH CAUSES²³ (1934)

All natural death causes	1,243,952
Cerebral hemorrhage	108,110
Diseases of the heart, other and unspecified	49,986
Diarrhea and enteritis	23,201

Next to the physician, coroners and jurors are ordered to investigate suspicious causes of death. "When violence is suspected a coroners investigation is held." "This may, however," remarks Brearley, "do little to clarify the record, since the inquests are often hasty and superficial."²⁴

A last group where homicide cases might be suspected are the missing persons and the unidentified dead. The missing persons do not, by obvious reasons, appear in any mortality statistics.

²² *Ibid.* p. 14: "In many deaths there is no attending physician to certify the cause. The registrar of deaths accepts the word of the parents or relatives." Brearley, H. C., *Homicide in the United States* (1932) 14. It is well known that a large number of homicides are family tragedies, and the same members of the family dispose of the designation of the death cause.

²³ *Supra* note 21 at p. 15. "Physicians state that they are quite willing to certify the medical situation . . . but that they wish to avoid statements of a legal nature, such as 'homicide' or 'suicide.' Accordingly, when reporting violent deaths, they attempt to avert criticism and antagonism by minimizing the gravity of the situation, whenever the facts are not generally known or clearly established." Brearley, *op. cit. supra* note 20, at p. 13.

²⁴ "Unless the evidence is unequivocal, the jurors hesitate to charge that a felonious crime has been committed. Later when further inquiry has revealed the fact of homicide, no change is made in the death certificate already sent to the state and federal bureaus of vital statistics. Consequently, both attending physicians and coroners juries tend to choose the less blameworthy classifications whenever there is a choice of terms in reporting violent deaths." Brearley, *op. cit. supra* at p. 13.

Data for the whole country are not available;²⁵ but the figures of the New York Police Department are significant enough.²⁶

TABLE 8

MISSING PERSONS AND UNIDENTIFIED DEAD
(NEW YORK, 1935 AND 1936)

	1936	1935	1936	1935	1936	1935
	<i>Reported</i>		<i>Closed</i>		<i>Pending</i>	
Missing persons, local.....	10,796	10,314	10,387	10,163	409	211
Missing persons, other						
authorities	1,353	1,137	1,028	1,037	325	100
Unidentified dead	888	1,231	768	1,104	120	127

Without entering into a discussion about the meaning and the extent of the term "Closed," and omitting the missing persons who were not local cases, the following instructive table of pending missing persons and pending unidentified dead is opposed to the homicide convictions of New York:

TABLE 9

MISSING PERSONS, UNIDENTIFIED DEAD (PENDING) ²⁷			HOMICIDE CASES AND CONVICTIONS FOR HOMICIDE ²⁸		
NEW YORK, 1935 AND 1936			NEW YORK, 1935 AND 1936		
	1936	1935		1936	1935
Missing persons, pending..	409	211	Deaths (death cause		
Unidentified dead, pending	120	127	homicide)	443	443
			Convictions for homicide..	104	94
Total	529	338			

The convictions for homicide amount merely to 19.6% (1936) and 27.8% (1935) of the missing persons or unidentified dead.²⁹ The expert knows, moreover, that mistakes, even frauds, are not uncommon in the identification of corpses. We ought to have more exact dates about missing persons, covering a sufficient period and a sufficient area.³⁰

²⁵ In Washington, D. C., out of 3,501 missing person cases reported during the fiscal year 1936-1937, 3333 were located. This leaves the number of 168 persons still missing.

²⁶ Annual Report for the Year 1936, Police Department, City of New York (1937) at p. 8.

²⁷ *Supra* note 25, at p. 104.

²⁸ *Supra* note 25, at p. 104.

²⁹ Convictions would descend to 10.7% (1936) and 12% (1935) if we include the deaths by homicide as proved by the mortality statistics. Our death figures are not available for the years 1936 and 1935, but only for 1934.

³⁰ "A second source of error is that undoubtedly some slayings are successfully

The result of this survey is discouraging. Reforms are needed, but no reform can be accomplished without understanding and without reform mindedness. Even if this nation would rise to establish a center of teaching the tactics and the strategy of the internal defense, a West Point of Law Administration and Law Enforcement, the necessity of a change has to be impressed upon public opinion. What the writer fears most is an hasty effervescence and an hasty collapse. Calm and tenacious determination is needed, that does not talk very much, does not promise miracles, that does not work for the present alone but for future generations.

The situation is discouraging, but not hopeless. Detection and conviction have likewise a very low success rate in other countries, especially regarding murder. East³¹ has lately given figures for England:

TABLE 10

DISPOSITION OF 343 INDIVIDUALS INVOLVED IN 338 MURDER CASES KNOWN TO THE POLICE (ENGLAND, 1929-1932)

Not arrested	27 or 7.9%
Suicide ³²	132 or 38.5%
Discharged and not convicted ³³	129 or 37.6%
Convicted	55 or 16.0%

If the excellent English Police arrive at a conviction rate of only 16% of the murders known to the police, we need not lose courage. We must bear in mind two trends in reading the English figures. A considerable number of murders keep outside the cases "known to the police." On the other hand 86 persons of the number of the non-convicted were taken over as insanes by other protective agencies and therefore removed from free life.³⁴ Furthermore, the English figures apply to murder exclusively; its detection rate is lower than in manslaughter.

How can detection be improved? Detection has two sides: a purely technical one and a psychological one. The technical prog-

cccnced. The newspapers occasionally report the finding of an unidentified skeleton and thus controvert the familiar proverb: Murder will out." Brearley, *op. cit. supra* note 20, at p. 14. Proverbs mainly answer the conditions that prevailed at the time of their origin. It is dangerous to rely on proverbs under fundamentally altered circumstances. Today for instance a corpse can be annihilated by chemical means without the slightest trace left.

³¹ East, W. N., *Medical Aspects of Crime* (1936) 368.

³² One case of a suspect dying during trial (no suicide).

³³ Discharged at police court, 8; no true bill, 1; acquitted, 34; insane on arraignment, 26; guilty but insane, 60.

³⁴ About 70% of all cases of non-conviction.

ress is limited by the fact that the technique of the criminal is also continuously improved, and the writer ventures to assume that the motorization of the world has given the criminal a greater share of help than the police. Nevertheless, a good technique of crime detection has to be built up and kept up to date. The technique has a human and therefore a psychologic side: it consists of a well developed and well directed organization, of interested, well paid, experienced and disciplined officers. But the great problem of the moment is the psychology of detection—a well founded and teachable theory of detection. Astronomers calculate celestial bodies, before they can be observed. We calculate the position of a firing gun, without seeing it, by the purely mental process of triangulation. The same holds true with the detection of a criminal. In possession of a couple of facts that are present in nearly every murder, and knowing fixed relations of these facts to the person of the perpetrator, we ought to be able—not to calculate the criminal—but to come so close to him, that the detection rate is substantially improved.