Journal of Criminal Law and Criminology

Volume 31
Issue 2 *July-August*

Article 2

Summer 1940

Criminal Justice--New York State

Harry Willbach

CRIMINAL JUSTICE—NEW YORK STATE

Harry Willbach[1]

The administration of criminal justice has at various times held the passing interest of most citizens. However, they view it only as they see it in specific cases with which they have personal connection, or which have been publicized by the press. All too often these few selected incidents have been the basis for formulating inaccurate and erroneous generalizations and conclusions.

The community as a whole and some specialized bodies, notably the police and the courts, require more inclusive information which is based on the sum total of the activities of the agencies engaged in administering criminal justice.

This study seeks to determine some basic findings relative to the administration of criminal justice in New York State. It is based on published tabulations of the final disposition of felony charges which were brought before the courts.[2]

Crimes have in general been classified as felonies or as misdemeanors. The former are considered as being serious. They may be heinous and therefore outrage the complacency of the group. In the main, however, they cause or threaten severe personal suffering or great financial loss. Misdemeanors, on the other hand, are those crimes which are considered as being less serious. They cause or threaten minor personal suffering or minor financial loss. Most of them are violations of local ordinances which have been enacted to maintain the orderly arrangement of community life.

There is no clearly stated guiding principle by which a crime is designated a misdemeanor or a felony. The determination seems to hinge on distinctions and reasoning which are beyond understanding and are almost sophistries. This is clearly indicated by the fact that with the passage of time some acts which had previously been classified as misdemeanors have suddenly become felonies, merely by the operation of legislative will. Conversely, other acts have been transformed from felonies into misdemeanors. Because of this it is necessary to thumb the pages of the penal code to determine whether a crime is a felony or a misdemeanor at a given time and in a given jurisdiction.

Since they are more serious, convictions of felonies are punished more severely. Probably because of the possibility of this greater punishment,

[1] The Capitol, Albany, N. Y.

[2] Annual reports of the Commission of Correction, New York State.

numerous safeguards have been set up to prevent the wrongful and unjust conviction of persons accused of these crimes.

In most instances the initiation of felony charges is by arrest made by the police. This agency, charged among other duties with the prevention of crime and the apprehension of offenders has a working knowledge of the penal law. It has also at least a nodding acquaintance with the operation of criminal courts and the rules of evidence. It must then be assumed that the police know what crimes are felonies and which are misdemeanors. It must follow that when these officials charge a person with a felony there must have been some ground for so doing. These charges are different from the vast number of arrests on suspicion and for the commission of misdemeanors.

Arrest is the function of the police agency. It is by no means proof positive of guilt. The determination of innocence or guilt is the function of the judicial agencies—the courts. They are the bulwarks of the freedom of the citizenry. They jealously guard the rights and the liberties of the people and prevent injustice and oppression.

Data published by the State Department of Correction shows that more than one and a half million misdemeanor* arrests were disposed of in 1936 and 1937. These, it must be repeated, are the less serious crimes. By far the greater part of these dispositions were by conviction and only one-quarter of a million were acquittals or dismissals of the charges. These acquittals and dismissals were about one-seventh of the total number of misdemeanor arrests disposed of.

These reports show also that during the same two years, the inferior courts, the grand juries and the county and supreme courts disposed of 45,803 felonies and, that more than half were acquitted or had the charges dismissed!

The ratio of failure to convict was more than three times as great in felony cases than in misdemeanor cases. Six out of every seven persons charged with misdemeanors were convicted but only three and a half out of every seven persons charged with felonies were convicted as a result of these charges.

It might be maintained that these contrasting figures do not present any discrepancy. This point of view would be based on the fact that persons charged with felonies were provided with three safeguards thus offering three opportunities for dismissal—the inferior courts, the grand juries and the trial courts.

But the facts do not bear this out. This will be seen by viewing the actions of the preliminary courts with relation to felony charges. Almost every person charged with a felony appears before these courts. It is their duty to weed out those cases which do not seem to present sufficient evidence to justify the holding of the accused for the grand jury. One out of every four persons arraigned for felonies was discharged by these courts. However, only one of every seven persons charged

* Includes traffic infraction for 1937.

with misdemeanors was discharged by these same courts.

Can it be that the police are more thorough and more exact in gathering evidence against persons charged with misdemeanors than against those whom they charge with felonies?

Can it be that the inferior courts have two points of view for guarding the rights of persons coming before it —a rigid standard in the cases of those charged with felonies and a not-so-rigid standard in the cases of those charged with misdemeanors?

Can it be that the inferior courts demand a higher degree of convicting evidence merely to hold a person for the grand jury than to enter a final finding of guilt of a misdemeanor?

Whatever the explanation (and it must be based on study rather than conjecture) the fact is that the probability of dismissal in the lower courts is much less for a person charged with a misdemeanor than it is for a person arraigned for a felony.

In addition to the preliminary courts which dismissed the charges of one-quarter of the felony arraignments there are two other stages in the criminal judicial structure in which felony charges may be voided.

The grand juries in the several counties pass upon the evidence in all cases not disposed of in the preliminary courts by conviction of misdemeanors or by dismissal. It is the duty of these bodies to determine whether the evidence against the accused is sufficient to make out a prima facie case. If it is sufficient an indictment is returned and the accused is held for trial. If it is considered insufficient there is no indictment and the charge is dismissed and the accused is exonerated.

During the two years of 1936 and 1937 these grand juries, in all of the counties of the state, dismissed the charges against 6055 persons arraigned for felonies. These 13.2 per cent were dismissed after the police had believed they had sufficient evidence to justify felony charges and after the preliminary courts—the great weeding out agency that dismissed more than one-fourth of all persons arraigned for felonies—had felt that the evidence warranted the continuance of the charges against the accused.

Thus out of a total of 45,803 persons who appeared before the courts on felony charges only 23,050 or slightly more than half, actually reached the county or supreme courts for the final determination of innocence or guilt. Almost one-quarter of these were dismissed or acquitted while the remainder were found guilty of crimes either by a plea of guilty or after a trial.

In the activities of these tribunals one very interesting situation stands out. It is that there seems to be a regularity in the ratio of felony arraignments disposed of in each stage by dismissal or by acquittal. In the preliminary courts, the grand juries and the trial courts approximately one-fourth of all the felony charges presented were terminated by the dropping or the removal of all charges against the accused.

It was previously stated that one-half of the 45,803 felony charges were disposed of by acquittal or dismissal. The

other half resulted in convictions. Not all of these however were for felonies. Only half of those convicted were found guilty of felonies. The other half were found guilty of misdemeanors — minor crimes.

To summarize the experience of the entire group of 45,803 felony charges it can be said that one out of every four was convicted of a felony; another one out of every four was convicted of a misdemeanor and two out of every four were terminated by acquittal or the dismissal of the charges.

It should not be assumed that conviction necessarily implies the finding of guilt after trial by jury. It is a well known fact that the frequency of trials in criminal cases is rapidly decreasing. Convictions in a large proportion of the cases were the result of pleas of guilty. These pleas had almost invariably been to crimes of lesser seriousness and therefore carrying lesser punishments than those charged in the indictments.

These lesser crimes were both felonies and misdemeanors. One-third of all the convictions in the county and supreme courts were for misdemeanors and could be punished only as misdemeanors. These cases had previously been passed upon by the arresting officers, the preliminary courts and the grand juries. Each of these groups believed that there was sufficient evidence to bring about a conviction of a felony. And yet, in the higher court, these charges were disposed of as misdemeanors.

Much has been heard of bargain-counter justice. It is an aged practice in criminal procedure. Those who engage in it and who are responsible for its prevalence always justify it by saying "half a loaf is better than none." But is it half a loaf? Is conviction so uncertain when three other state agencies have already registered their opinion that the evidence seemed sufficient to expect conviction?

It is to be hoped that this explanation—this half a loaf theory—is not meant in good faith. Otherwise it points to an alarming and a dangerous condition that bespeaks almost universal sympathy with the malefactor and perhaps a general disregard for law and order.

The half a loaf theory might be valid and tenable where the pleas of guilty were to lesser crimes which however were also felonies. It cannot be successfully maintained as regards pleas to misdemeanors in county and supreme courts.

While the list of felonies as given in the penal code is an imposing array there are many crimes which seldom appear on the court calendars. Of the more than forty-five thousand felony charges that were disposed of in New York during the two years of 1936 and 1937, five crimes constituted almost eighty per cent of this number. These were assault, sex offenses, robbery, burglary and larceny.

Because they loom up so often it is advisable to examine the outcome of the court proceedings as regards these five felonies or groups of felonies. There is no one principle that holds for all of these crimes. Each presents an entirely different situation due, in all probability to the presence of many dif-

ferent factors which appear in different arrangements or constellations.

For example, among arraignments for feloneous assaults there was a higher rate of dismissals and acquittals than among any of the other crimes. Two-thirds of all the charges of assault were disposed of in this way.

Other significant facts are that more than half of the charges were disposed of in the preliminary courts and only about one-quarter of all the arraignments for assault reached the county and supreme courts.

Less than one out of every ten persons charged with assault was convicted of a felony.

It must be emphasized that all of the assault cases with which we are here concerned were felony arraignments. Yet, only one out of every four reached the county or supreme courts—the tribunal having final jurisdiction over felony cases.

This situation calls for a careful consideration of the adequacy of the definition of feloneous assault. It suggests that the courts may be unwilling to consider assault a felony.

The sex crimes had the next highest ratio of dismissals—fifty-five per cent of all the arraignments having been disposed of in this way. However, less than half of these occurred in the preliminary courts. The lower courts were less prone to take final action in the sex cases than in assaults.

More than half of the sex felonies reached the county and supreme courts and one-fourth of these were subsequently acquitted or dismissed.

Of the total of 4,259 arraignments for robbery one-fourth were disposed of in the inferior courts. One-tenth were disposed of by the grand juries and the remainder—about two-thirds—reached the county and supreme courts. Those convicted of felonies constituted two-thirds of the number that reached these courts or three-sevenths of the total arraigned for these crimes.

Arraignments for burglary showed the smallest ratio of dismissals and acquittals—less than one-third of the total being terminated in this manner. The other two-thirds were divided fairly equally between convictions of felonies and misdemeanors. Here also two-thirds of all the arraignments reached the county and supreme courts. However, more than forty per cent of the burglary charges disposed of by conviction in these courts of exclusive felony jurisdiction were for misdemeanors.

The arraignments for larceny were disposed of very much in similar manner to the total of arraignments for all felonies. Slightly more than half of the charges were terminated by acquittals and dismissals. The remaining half were convicted and were divided fairly evenly between those found guilty of misdemeanors and those found guilty of felonies.

The results of the prosecution of the charges can be summarized as follows:

Ratio of Total Arraignments

	Dismissed or Acquitted	Convicted of Felonies	Convicted of Misdemeanors
Assault	2 out of 3	1 out of 10	2 out of 9
Sex crimes	1 out of 2	3 out of 10	1 out of 6
Robbery	1 out of 2	4 out of 10	1 out of 16
Burglary	1 out of 3	1 out of 3	1 out of 3
Larceny	1 out of 2	1 out of 4	1 out of 4
Total		(All Felonies.)	

More than ten years ago many states were alarmed at what were called crime-waves. Here, there and everywhere it was believed that crime was rampant, that lawlessness was on the increase and that a general disrespect for law pervaded the nation.

The New York legislature answered this fear by creating the Crime (Baumes) Commission. This body carved the entire field of the administration of criminal justice from the activities of the police to the decisions of the court of appeals. Each of these phases was carefully investigated.

One of the subcommittees made a study of the operation of the courts relative to felony arrests. An analysis was made of all felony arraignments initiated during the last half of 1926. More than ten years have passed since then and it is interesting to compare the functioning of the courts at that time with similar data for 1936 and 1937.

There were 11,363 felony charges initiated during that year which were disposed of. More than half—55 per cent —were disposed of by acquittal or dismissal. This compares with 52.5 per cent of the 1936 and 1937 felony arraignments that were terminated similarly.

While this does not indicate much change there was one outstanding difference in the treatment and the disposition of felony charges of these two periods. In the Crime Commission study 53.4 per cent of all the final dispositions occurred in the inferior courts. The comparative figure for the felony arraignments of 1936 and 1937 was 36.4 per cent. This indicates beyond any doubt the decreasing importance of the inferior courts as agencies for the final determination of felony charges. And as a corollary it indicates the restoration to the trial courts of the duty for which they were created —the determination of the innocence or guilt of persons charged with felonies.

It is borne out even more forcefully by the fact that while 37 per cent of the felony charges of the Crime Commission study were dismissed in the preliminary hearings, only 27.4 per cent of the felony arraignments of 1936 and 1937 were dismissed by these lower courts.

Probably the most interesting and the most important comparison between the two studies lies in the frequency of conviction of felonies. While less than one-fifth of all of the felony arraignments of the earlier study resulted in convictions of felonies, the data for 1936 and 1937 showed that this ratio had risen to one-fourth.

The interval of approximately ten years showed an increase of one-third in the convictions of felonies.

It was implied in the Crime Commission report that the inferior courts were not sufficiently competent to pass final judgment on so large a number of felony arraignments. That this has been heeded is clearly shown by the fact that while only about one-third of the felony charges of that study reached the county and supreme courts, the data for 1936 and 1937 showed that one-half of the charges were presented to these courts.

The comparison of these two periods —separated by a decade—shows clearly the increased use of the county and supreme courts in the disposition of felony charges. It shows further, and probably as a result of this, a very great increase in the ratio of arraignments in which the defendants were convicted of felonies.

Though the experience with felony arraignments of 1936 and 1937 shows several desirable changes as compared with the Crime Commission study of 1926 it is evident that there has been very little change in the ratio of the charges that were terminated by acquittal or dismissals. While the preliminary courts have decreased their activity in terminating felony charges in this manner the fact is that in both studies somewhat more than half of all the felony arraignments were dropped. The interval of ten years has witnessed a greater tendency for felony charges to be terminated in the county and supreme courts by dismissal or acquittal.

Surely there cannot be anything mystical in the ratio of one-half. How then can the constancy of the dismissals be explained?

The answer must be sought among all the individuals and agencies involved in the administration of criminal justice.

The police may have failed to assemble and to preserve adequate evidence.

The district attorney may have been remiss in consenting to the dismissal of charges merely because they were not supported by an overabundance of conclusive evidence.

The courts may have leaned too heavily on the recommendations of the prosecutor or may have failed to insist on the adequate preparation and skillful presentation of cases.

The defendants attorney, by requesting and securing repeated adjournments may have given aid and assistance in the intimidation of witnesses by gangsters, racketeers, and other figures of the underworld.

The responsibility for the high ratio of dismissals and acquittals rests on all of these. Unwittingly and unintentionally they have brought about a general disrespect for law.

This disrespect goes much further than the particular case involved. It produces a condition that threatens the very foundations of democracy. This disrespect can be overcome by the united efforts of all of these individuals and agencies in bringing about procedural changes that will result in speedy trials and at the same time retain intact and unaltered all the evidence that was originally presented.

These changes may cost the state more money, may entail more work on the part of the district attorney's office and the courts and may cut into the income of defendants' attorneys. If these are viewed as disadvantages they will be more than offset by the increased respect for law and by a more law-abiding populace.