

Summer 1959

## Need For New Concepts in the Administration of Criminal Justice

Erle Stanley Gardner

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Erle Stanley Gardner, Need For New Concepts in the Administration of Criminal Justice, 50 J. Crim. L. & Criminology 20 (1959-1960)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

## NEED FOR NEW CONCEPTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE

ERLE STANLEY GARDNER

Mr. Gardner's fame as a detective story writer, particularly as regards his *Perry Mason* series, has obscured many of his other attributes and accomplishments. Not many of his readers, for instance, may be aware of the fact that he is not only a member of the Bar, but that for a number of years, he successfully practiced law, particularly as a trial attorney. His keen perception, as a fiction writer, of court room procedures and trial techniques is matched by his competency as an observer and appraiser of the actual administration of criminal justice from the police level on up to appellate court review. Mr. Gardner, as this article indicates, has developed a very serious concern about some deficiencies in our present procedures and practices which occasionally result in the conviction of innocent men. He expressed these views in substantially the same form as herein presented in an address delivered at the Northwestern University Short Course for Defense Lawyers in Criminal Cases, in Chicago, on August 11, 1958.—EDITOR.

One of the big troubles with the legal profession is that it tends to become too conservative.

Since the courts rely upon precedents, the lawyer is inclined to rely upon precedents. If he cannot find where something was done before by some other lawyer, he is afraid of it. If he is to work out a line of procedure, he feels that it must be predicated upon the strategy of lawyers who have previously undertaken the solution of the same problem. Since these lawyers were also relying upon precedents, the legal profession moves forward very slowly, particularly in the area of ideas. And this is especially true in the field of criminal law.

Some years ago, prosecutors organized and banded themselves into various associations. Since that time they have been able to do a great deal to assist one another in obtaining convictions. There has been but little attempt to organize upon the part of defense attorneys and there has been very little new basic strategy in defending persons accused of crime.<sup>1</sup>

To the prosecutor, *any* constitutional guarantee designed to prevent an innocent person being wrongfully convicted tends to be regarded as a "loophole in the law."

It must be remembered that from the viewpoint of the prosecutor, all defendants are guilty, otherwise the prosecutor would stultify his office by going to trial and asking for a conviction. Therefore, any legal gambit used by the defense

becomes automatically a "technicality" and, if it results in a verdict of acquittal, becomes a "loophole in the law" which should be "plugged" by the combined efforts of prosecutors throughout the country. In some ways this is right and in some ways it is wrong.

It should be borne in mind, however, that the prosecutor is just as much a partisan as is the attorney for the defense. He is not a judge and he should not try to be a judge in his own case. He can refuse, of course, and he should refuse to prosecute a man who, he thinks, is innocent; but having initiated the prosecution of a man he believed to be guilty, he should match the strategy of the defense attorney who is for the most part trying to get a verdict of not guilty.

Unfortunately, too many criminal attorneys lose sight of the fact that it is not a question of whether the man is guilty or innocent. The question is whether the prosecution has amassed sufficient legal evidence to prove the guilt of the individual beyond all reasonable doubt.

For some strange reason, society frowns upon the person accused of crime, but acquitted, simply because the prosecution was unable to convince the jury beyond all reasonable doubt. Of course, the answer is that both society and the prosecutor feel the man is guilty and that he has escaped his just deserts because of technicalities. To some extent, this feeling on the part of society is due to a certain lethargy in the field of public relations on the part of lawyers who practice what is referred to as "criminal law."

The issues are much broader than the guilt or innocence of the individual. To be sure, the defense

<sup>1</sup> It is gratifying to note, however, that during Northwestern University's first annual Short Course for Defense Lawyers in Criminal Cases, at which this paper was presented, there was established the "National Association of Defense Lawyers in Criminal Cases."

lawyers are taking part in a legal drama in an individual case, but above and beyond all of that they are protecting the liberties of all of us. The rule of law which says that a person must be acquitted unless he is proven guilty beyond all reasonable doubt, by evidence which meets with the technical rules of procedure, is the basis on which all of our rights are founded. It is the bulwark which protects your liberties, my liberties and the liberties of the prosecutor himself. It is the bulwark which protects the jurors from unjust accusation and conviction.

Forty years ago, when I was doing a good deal of work in the field of criminal law, we tried to rely in large part upon technicalities. At that time, there were many of these technicalities. The district attorney sometimes was enraged to a point where he would commit misconduct. I know that I belonged to a school of defense attorneys who tried to keep the case moving with such bewildering rapidity that it would be hard for the prosecutor or the judge to keep abreast of the various legal problems which were brought up with kaleidoscopic rapidity. In those days, the ethics of the situation did not bother anyone. Defense lawyers wanted to get a verdict of acquittal just as the district attorney wanted to get a verdict of conviction. There were certain tried and true tactics and lawyers at that time had, of course, a great deal more leeway than the attorney has today. In the first place, it was almost unheard of for a criminal case to be tried without interchanges of personalities between opposing counsel. The judge realized, of course, that according to strict rules and ethics each attorney should address himself to the court and personalities should be avoided. However, the judge also realized that each lawyer was pretty well able to look out for himself and it is quite possible that the judge, finding the case droning along through the drowsy hours of an afternoon following a heavy lunch, was quite willing to have the courtroom livened up by a bit of repartee between opposing counsel.

Regardless of the reason, however, in the courts in which I practiced, the district attorneys were inclined to sneer and defense counsel were inclined to roar. The district attorney would refer to the doctrine of reasonable doubt as though it were something that had been dragged in from the alley by a mangy cat, and defense lawyers would refer to the political ambitions of a district attorney who wanted to "stand on his record."

I particularly remember the tactics of one district attorney who used to appeal to the all-male juries of his time by referring to the strategy of defense counsel in murder cases as "an attempt to dangle the rope—an argument which my learned opponent might well use in addressing some sentimental women's club or sewing circle, but which is so much wasted breath upon you rugged he-men who are not going to be stampeded by arguments that could far better have been addressed to the fairer, and, incidentally, the weaker sex."

The strategy of those days was never to let the district attorney try the defendant. In fact, we always tried to keep the district attorney from trying anybody. We attempted to get there first and try the district attorney. The idea was to get him on the defensive in every way possible and to keep him on the defensive.

One of the veterans of criminal practice told me, "Erle, don't ever worry about the testimony of a witness for the prosecution as long as the jurors are looking at that witness, but when they begin to shift their attention from that witness and start to look at the defendant or at you, you can be pretty certain the jurors have made up their minds. If you don't do something at that point, you've lost your case." I was young and unsophisticated at the time and asked him what a defense lawyer was supposed to do under those circumstances. I also remember his reply. "Start something," he said, "that takes their minds off the witness and off the defendant. Accuse the district attorney of misconduct; accuse the judge of overruling your objections without having taken sufficient time to consider carefully the points you raised; refer to the witness as a Judas in connection with your arguments until the district attorney starts referring to you as a pettifogger; then refer to the district attorney as a career-mad politician; start fighting all over the courtroom until you have given the jurors something new to think about."

In those days, we had lots of legal latitude. That is not true today. The prosecutors have impressed upon citizens that they are the ones who are on the side of law and order and that society should back them up. The power of some prosecutors' associations over a period of years has been terrific. Constitutional safeguards of our liberties have in many instances been virtually swept away. Certain proof is considered as a prima facie indication of felonious intent, and in California we have the controversial Amendment IV- $\frac{1}{2}$  to

Section 6 of the Constitution, which provides that no error is sufficient to result in reversing a conviction unless the appellate court, after an examination of the entire record, *including the evidence*, comes to the conclusion that the error resulted in a miscarriage of justice. Now, quite obviously, if this Amendment means what it seems to say, the right to a jury trial has been greatly weakened. For instance, a district attorney may indulge in deliberate misconduct, throw a defendant's legal safeguards out of the window, and a judge could admit improper evidence; and then when the defendant appealed, the appellate court, looking over the record, "including the evidence" which had been hopelessly loaded in favor of the prosecution, would decide there had been "no miscarriage of justice."

For years, the California Supreme Court shied away from any real interpretation of this provision of the Constitution. Somewhat recently, however, the Court has deemed it necessary to caution prosecutors and trial judges by stating that there is growing evidence that courts and prosecutors are trying cases with an eye on Amendment IV-½ and that this practice must cease.<sup>2</sup>

This California principle regarding appellate review is a good illustration of the subtle change that has taken place in the whole field of criminal law. To some extent this is due to the fact that crime is no longer something separate and apart from the lives of potential jurors and the general public. Nowadays crime has become altogether too prevalent and is intimately connected with the life of the citizen.

When I was practicing criminal law there were a few bootleggers, a few gamblers, and a few, and I mean relatively a *very* few, professional yegg men. These persons mostly were drifters who moved from place to place, cracking safes or engaging in holdups. Today, the situation is far different. Crime has increased tremendously. Society is frightened by what is happening and it is a little desperate in its efforts to cope with crime.

Let us concede at the outset that it is as great a miscarriage of justice when a guilty defendant is acquitted as when an innocent man is convicted, if we are to consider only the end result of our judicial processes. I am also free to admit that in the course of years I have become very sympathetic with the prosecutor and his problems. I

<sup>2</sup> *People v. Lyons*, 47 C. 2d 311, 303 P. 2d 329 (1956).

have had a great deal of first-hand contact with crime and with criminals, and I have seen too many families soon after a young daughter has become the victim of some sex maniac. However, the prosecutors are well able to take care of themselves and are doing so very well. For example, witness the annual short course for prosecutors that Professor Fred Inbau has been conducting at Northwestern University's Law School. There is now being placed at the disposal of the prosecutor every tool he needs to do the job.

Because of the constant increase in crime, and because crime has come to affect almost every family either actually or potentially, society does not have this sympathy for the defense attorney; nor does it desire to place in his hands tools by which he can more readily discharge his responsibilities to his clients. Yet the public loves a little legal chicanery. When an author writes the biography of some astute criminal lawyer, that biography is eagerly devoured by the reading public, and the extent to which it is successful depends upon whether the author has skillfully insinuated that the lawyer's clients were guilty as sin, but were extricated from their predicaments by the daring ingenuity of unorthodox thinking and dramatic ideas put into execution in an exciting manner.<sup>3</sup> I know that even in my own stories where, of necessity, Perry Mason's clients must be innocent, there has to be a certain adroit circumvention of the legal ethics to arouse and retain the interest of the public. And as far as detective fiction is concerned, the dumb cop is a fixture because the public demands him! In fact, it is as necessary to have a dumb cop in a detective story as it is to have a clever detective.

For some years now, I have been interested in better law enforcement and my conscience got to bothering me about the manner in which Perry Mason pulled an intellectual razzle-dazzle on the dumb cops I had created in my books. Therefore, I decided to write a book in which I would show the police in their true colors and in which Mason would race neck and neck to a solution with the character who had previously taken the part of the dumb cop. The result was that the publisher was literally deluged with letters of protest from book dealers and public alike. It was not that they thought the officer was for the first time appearing in an intelligent role; the general theme of

<sup>3</sup> See, for example, FOWLER, *THE GREAT MOUTHPIECE* (1947).

the letters was that "Perry Mason is slipping." Some complaints were that Perry "hardly kept ahead of that dumb cop."

There is considerable evidence, in fact, to indicate that the dumb cop in the detective story is a device used by the reader to keep from becoming despondent. He can finish the book and say, "Well, I wasn't quite abreast of the detective in this case; he really fooled me, but at least I was way ahead of that dumb cop."

In contrast to detective story fiction, in the television fiction the public reacts more favorably to the police officer. On the Perry Mason TV show, for example, Lt. Tragg appears as a central, lovable, clever character and has built up a terrific audience following. Why is there this difference between written fiction and television? Perhaps it is because the dumb cop of fiction is a conventional fictional character, while the characters on television actually come to life.

Lawyers interested in the defense of persons accused of crime want to know, and should know, what they can do to increase their efficiency. They want to know how they can do a workmanlike job despite the various recent and careful plugging of the so-called loopholes that were once available. In my opinion, the only way to do an effective job in the field of criminal law at the present time is to break away from the traditions of the legal profession and start a brand new gambit. It is my opinion that all too frequently the accused, represented by a lawyer who relies upon the criminal law of yesterday, runs a substantial risk of conviction even though innocent.

I know that we have too many acquittals of guilty persons if we look at the over-all picture. Too many times a district attorney decides he does not have the evidence necessary to convict and dismisses the case or permits a guilty defendant to plead guilty to a lesser charge. Although many former loopholes have been plugged, the district attorney still finds himself handicapped because the evidence which should be turned into proof is lacking. That evidence has dribbled through the fingers of the investigators. It is in this very field of evidence and scientific investigation that the defense attorney of today must move if he is going to protect his client. There are altogether too many innocent men wrongfully convicted of crime. I do not know the percentage and I do not know the numbers, but I do know that too many innocent persons are being convicted, just as too many guilty persons are escaping.

I have had too many criminals who were putting their cards on the table tell me that, while they have been able to beat the rap in certain cases where they were guilty, the only times they were convicted were in cases where they were actually innocent and because of their very innocence had to go blind in preparing their defense.

Usually, when I mention this, the audience is inclined to smile. There is something naive about asking an audience to sympathize with a *guilty man*, with a criminal who managed to beat the rap in cases where he was guilty but who finally came to his just deserts as the result of a wrongful conviction. However, one should not look at the problem from this viewpoint, but from the frightening viewpoint of what it means in regard to the administration of criminal justice generally, for the same processes and thinking also account for the wrongful conviction of men who have no criminal records or criminal activities behind them.<sup>4</sup>

#### COURT OF LAST RESORT

There is a widespread erroneous idea as to the purpose of the so-called "Court of Last Resort" which was organized about ten years ago. Some of my associates and I agreed to donate as much of our time as possible to helping in the work of the Court of Last Resort. The underlying purpose was not to get innocent persons out of prison, but rather to arouse public interest in the field of criminal law and to get the people themselves to understand what must be done in order to improve investigative facilities on the part of the police, to upgrade police personnel, to have a better understanding of penology, of the actual and potential possibilities of probation and parole and, above all, to point out the most basic defect in our criminal law, which is that there is no possible review of a question of fact by any duly constituted tribunal in this country. For once a jury has decided that a man is guilty, the evidence can never be reviewed unless it is so legally insufficient as to constitute no evidence at all. The stigma of guilt has been fastened upon the individual, and, while he may appeal through several courts on questions of law, the door has been closed on any redress as far as reviewing the facts is concerned.

From time to time the Court of Last Resort

<sup>4</sup>For an interesting account of many instances, years ago, of such miscarriages of justice, see BORCHARD, *CONVICING THE INNOCENT* (1932).

selects cases of innocent persons who have been wrongfully convicted, simply for purposes of illustration, and in order to show that we are not talking about theoretical case possibilities but about actual facts which are unfortunately occurring from day to day. However, because the taking up of cudgels on behalf of a defendant who has been wrongfully convicted is the most dramatic aspect of the work we are doing, the tail has a tendency to wag the dog. Moreover, as a result of this dramatic aspect being emphasized in a series of television shows, it has become almost impossible to get the general public to understand exactly what it is the Court of Last Resort is trying to do. Actually, it is not interested in individual cases as such, but in better law enforcement, in the better administration of justice.

Unfortunately, attorneys, being steeped in tradition, have had a tendency to follow blindly along the path blazed by the prosecutors, a path along which most of the legal loopholes have been plugged. The attorney who follows this general rule of practice finds himself being pushed into an alleyway which has been fenced on both sides and which starts at the police station and leads to the penitentiary. He is forced to accompany his client down this fenced runway until the doors of the penitentiary clang shut upon the client, and the attorney is at liberty to return to escort some other defendant along the same pathway.

Because district attorneys are constantly growing more ethical and because the majority of the leaders of the prosecutors are dedicated to their profession and their careers, many innocent persons are weeded out, and, for the most part, the men who are pushed into this fenced roadway leading to the penitentiary are men who belong in the penitentiary anyway. But now and then an innocent person is shoved along this road despite the attempts on the part of his counsel to find some place where there is a hole in the fence. The number of innocent persons who are behind prison walls we do not know, but I personally know that many wardens are thoroughly convinced that at least one man in their prison is perfectly innocent. And I also know that many parole boards believe that certain individuals were wrongfully convicted, but parole boards do not dare to open up that field. They are most receptive to efforts on our part to establish that the original conviction was a miscarriage of justice, but as far as the boards themselves are concerned, they are forced to treat

the individual as guilty because they dare not establish such a precedent.

#### WHAT CAUSES MISCARRIAGES OF JUSTICE?

Unfortunately, in altogether too many instances, they are the result of defense attorneys who have had their minds so preoccupied with trying to find unplugged loopholes in the fenced-in legal alleyway leading from the jail to the penitentiary and down which their clients are being conducted that they have failed to concentrate on some basic fundamentals. The relatively simple solution of turning squarely around and retracing their steps down this alleyway has never occurred to them.

The future of criminal law lies not in technicalities, but in a knowledge of scientific investigative work and of proof.

I have examined many, many transcripts since we started the Court of Last Resort and, to my surprise, here and there I have found transcripts in which it is quite apparent the defense attorney has been so hypnotized by the theory of the police and the prosecutor, so engrossed with trying to find some loophole in the legal fence, that he has failed to take into consideration the real problems of proof involved. In fact, in one of our first cases where a man was sentenced to be executed, where a whole battery of defense attorneys had exhausted every bit of legal procedure which they could think of, including writs which at that time were quite novel, at least in California, where the guilt of the defendant was established by such overwhelming evidence that the sympathies of everyone reading the transcript were alienated, every single one of these attorneys had overlooked the significance of the real situation disclosed in that transcript. At the time the parties came to me, the execution was about a week away. There was no time for any further writs within the ordinary meaning of the word because every remedy had been exhausted. Furthermore, I had no official status in the case. However, when I examined this transcript, looking at it from a different viewpoint than the conventional viewpoint of a defense attorney, regarding it as a scientific investigator looking at a legal problem, I found that the transcript itself established the defendant's innocence. There could be no question about it. The evidence introduced by the prosecution itself, when taken in its entirety, in view of *all* the facts established by the prosecution's own witnesses, showed that

the defendant simply could not have been guilty of the murder.

I wrote a letter to each Justice of the State Supreme Court, to the Attorney General and to the Governor. I called their attention to the evidence in the transcript simply as evidence and from a cold-blooded scientific standpoint. I do not know all that happened following the receipt of that letter. One of my friends, who is a Justice of the Supreme Court, told me that if I could have been in chambers when that letter was received, I would have seen some very surprising action and would probably have had a great deal of satisfaction. In any event, the death penalty was promptly commuted to life imprisonment so there could be a further investigation. Thereafter, it appeared that a witness, who had identified the defendant positively by the color of his clothes, was, in fact, color-blind.

I recall another case where two men were sentenced to death and spent some twenty-four months in death row. The sentence was subsequently commuted to life imprisonment and after they had served many years we were, I think, able to convince the authorities that the men had been wrongfully convicted. The authorities did not acknowledge the error in so many words, but the men were released on parole and are at the present time living the lives of free citizens. In that transcript, the main witness for the prosecution inadvertently made one statement which, when carefully studied, indicated that the crime simply could not have been committed in the manner contended by the prosecutor. Yet the significance of this statement was completely lost upon the defense attorneys. It was, after all, only a slender clue blurted out in connection with a high-speed cross-examination interspersed with considerable personal clashes between counsel. Yet the clue was there and if it had been taken by the cross-examining attorney, it is quite possible that the entire case would have fallen apart. There was also one other clue in this case, in the physical evidence, which I think furnished the lever with which we were able to pry these defendants out of their life imprisonment. It indicated, to my mind at least, the true explanation of what had happened; and, starting our investigation on that theory, we found that evidence had existed which had theretofore been kept from the public and presumably from the defense attorneys. This evidence gave unmistakable physical indications that the crime as

envisaged by the prosecutor simply had not taken place.

The attorney who is going to practice criminal law must of necessity know something of the problems of scientific proof. He must understand the extent to which science has been able to help the investigator in the criminal field. Even today, with all of the facilities available to prosecutors, in probably ninety-five per cent of the cases prosecuted, scientific evidence which should have been available has either gone undiscovered, has been so contaminated as to be useless, or has entirely escaped the attention of the police and the prosecutor.

Recent developments in the field of science can, when properly applied to the practice of criminal law, open up new doors, new channels of thought and entirely new gambits in the field of proof.

Defense counsel do not necessarily have to produce scientific proof themselves that the defendant is innocent; it is sufficient if they can make the court and jury realize that there was scientific proof available to the prosecution and that consequently it is an insult to the intelligence of judges or jurors to ask them to act upon surmise or upon the eloquence of a prosecutor when by proper investigative work scientific proof could have been presented to them. Then defense counsel will find that jurors will begin to sit up and take notice.

Once defense lawyers start doing this, they are going to force the prosecutors to protect their potential scientific evidence at the time of investigation, and to use it as proof. When this practice is followed you can be sure that many of the persons who are seemingly implicated by unimpeachable proof will be found to be innocent.

This whole field of science is relatively new. Much of it is unexplored and once prosecutors start entering this field there will be many opportunities to question the scientific conclusions reached as a result of that evidence. Take, for instance, a case in Philadelphia. A man had been convicted of murder some quarter of a century ago. He had been sentenced to life imprisonment. At the time there was no such thing as firearms identification as we know it today. A relatively short time ago the firearms expert in the district attorney's office happened to be prowling through the exhibits in some of the old cases and found the gun and the fatal bullet in this old case. He decided to show how science could have convicted this individual without the long, tedious trial which had con-

sumed so many days, and so he fired test bullets and compared them with the fatal bullet. At first he could not believe his eyes. The fatal bullet simply had not been fired from the defendant's gun, despite the testimony of eye witnesses. In other words, an innocent man had been convicted of murder some twenty-five years ago, and science could have prevented his conviction.

I feel that the practice of criminal law is now entering an era where proof will depend far more upon circumstances and the scientific interpretation of circumstances than upon the opinionated evidence of witnesses. Any veteran attorney knows that circumstantial evidence is about the best evidence there is and that eyewitness identification evidence is just about the worst. The trouble, however, is that while circumstantial evidence may be the best, the circumstances themselves are frequently misinterpreted and it is in this field of interpreting circumstances that the criminal attorney of tomorrow is going to make his fame and reputation.

Perhaps the best way to illustrate what I mean is to tell you one of my favorite true stories. This story illustrates both the efficacy of circumstantial evidence and also the pitfalls of reasoning which can be created by circumstantial evidence.

Many years ago, before we knew the cause of malaria, I lived in a malarial climate. Everyone had malaria. We had it at more or less regular intervals. It was a terrific scourge and accounted for much of the over-all illness of the community. One of our best doctors put in a lot of time trying to discover the cause of malaria. Many doctors were working along the same lines but their reasoning was predicated upon prejudice. This particular doctor was a scientific observer. He had a fine mind and he was determined to ascertain the cause of malaria. So he started keeping records on his patients and found to his surprise that young boys who had been out on watermelon-stealing expeditions almost invariably came down with malaria. Now, if the doctor's reasoning had taken one particular turn and he had realized that mosquitoes live in the damp moisture of the watermelon leaves and that raids took place usually when there was the period of greatest activity on the part of mosquitoes, this doctor's name would have gone down in the annals of medical history as one of the great physicians. But he started calling

in the boys who engaged in watermelon stealing and asking them, "What is it that you do when you are stealing watermelons that is different than what you do when you're eating watermelon at home?" The boys told him that when they were stealing watermelons, they cracked open the ripe ones and ate only the hearts, that they ate large quantities of the sweet, succulent watermelon hearts. In fact, they gorged themselves on this particular delicacy, whereas when they had watermelons at home they ate only a small part of the heart and much of the surrounding pulp. So this doctor made a very understandable mistake. He came to the conclusion that the cause of malaria lay in eating watermelon hearts! Having reached that conclusion, he broadcast it to the world.

My family was particularly fond of watermelons, but for many years we would carefully cut out the watermelon hearts, throw them into the garbage, and content ourselves with the less desirable parts of the watermelon.

This story of the watermelon hearts is an excellent illustration of a real problem that exists in the field of criminal law today.

We are embarking upon an era of scientific investigative work, but it is going to take shrewd reasoning to interpret the results. We are going to find some scientists who fall into the same trap as the doctor who convinced himself that watermelon hearts were responsible for malaria.

The shrewd defense attorney of tomorrow is going to be the one who can accept the scientific facts presented by the prosecution, yet be able to effectively point out the possibilities of a defect in the interpretation of the scientific evidence and thereby convince the jury of the invalidity of the state's case. And this new concept will make the practice of criminal law much less of the legal hodgepodge and guesswork that unfortunately surrounds it today.

The challenge is there for the legal profession to meet, and the defense lawyer who avails himself of short courses such as Northwestern's annual Short Course for Defense Lawyers in Criminal Cases is going to meet it head on. The impact of his efforts will be far greater than what results in his particular case, for he will be establishing a new and much needed concept in the administration of criminal justice.