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ILLOGICAL VARIATIONS IN SENTENCES OF FELONS COMMITTED TO MASSACHUSETTS STATE PRISON[1]

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In 1939, the Committee on Sentencing, Probation, Prisons, and Parole of the American Bar Association chose to emphasize in its report to the Association's Section of Criminal Law the findings of a United States Department of Justice study dealing with the sentencing practices of judges. According to the Committee's report, the study embraced the views of some 270 federal and state criminal court judges selected from all but three states and its essential conclusions were as follows:

1. Criminal court judges need much more assistance in obtaining case history material about offenders, and also more help in interpreting and applying such material to individual offenders before sentencing them.

2. The "hunch" system of sentencing offenders admittedly adopted by many of the judges cannot be justified as a substitute for a thorough study of the individual characteristics and problems of the prisoners.

3. There can be little question that many men are sent to prison who would be good risks on probation, in fact, better reformative prospects than when they are released from prison.

4. Much educational work needs to be done among the judges of the country in making more clear the functions which good parole and probation work could and should perform in controlling and rehabilitating the convicted.

5. Far too many judges are carelessly lenient in disposing of cases involving youthful first offenders. Frequently such offenders are released on probation into the custody of their parents or relatives who have already demonstrated a lack of control over them.

6. Too many judges are inclined toward imposing lenient sentences when defendants plead guilty, justifying the practice chiefly on the ground that pleas of guilty save the state much time and money and also often indicate that the defendant is ready to reform his way of life. The practice gives rise to grave abuses, especially when the leniency takes the form of granting probation to large numbers who plead guilty.

7. The tendency of many judges to countenance the compromising of criminal cases to the extent of indicating by statement or by their record a greater inclination to grant probation if the defendant pleads guilty confuses the guilt-finding process with the sentencing process. The practice of some judges of denying probation unless the defendant pleads guilty is not an exercise of defensible discretion. Probation should rest entirely upon the facts disclosed by a thorough case-history study of the defendant and not upon the fact that he pleaded guilty, or turned state's evidence, or pleaded for leniency.

8. The sentencing records of many judges, as well as the judges' own statements concerning their sentencing practices, shows the presence of arbitrary variance and numerous highly subjective factors and personal biases in the imposing of sentences. On the whole a very unscientific job of determining what treatment should be imposed upon those convicted of crime is being done by most judges.

9. One of the striking impressions gained from the Department of Justice's study is that criminal court judges need more specialized training in those

[1] The material for this paper was originally prepared under the direction of Professor Albert Morris and submitted as a thesis in partial fulfillment of the requirements for the degree of Master of Arts at Boston University in June, 1940.

[2] Boston Council of Social Agencies; formerly of the Massachusetts Department of Correction.

> sciences that are making significant contributions to the study of human behavior if they are to exercise a dominant rôle in determining what treatment shall be given to persons convicted of crime.[3]

The report of the Committee urged that in the light of the foregoing findings members of the American bar be prepared to assist judges in securing "better facilities, more information, and adequate assistance as aids in determining the treatment which should be imposed upon convicted criminals."[4]

Since the publication of the Committee's report few, if any, changes have occurred in the Massachusetts system of sentencing offenders in the state criminal courts, and so far as can be determined, there are no definite plans under way to initiate any fundamental changes in the near future. Therefore, it seemed appropriate to examine a sampling of sentences to determine whether or not Massachusetts may properly claim exemption from the charges of "arbitrary variance" and the exercise of indefensible discretion in the sentencing practices of its criminal courts.

That Massachusetts can not claim exemption from these charges is a conclusion firmly substantiated by the evidence. For, an analysis of State Prison sentences imposed upon a total of 1,661 criminals committed during a recent five-year period, shows that at least twenty per cent of all received sentences which, in the light of careful social prognoses based upon verified facts of their social case histories, are wholly indefensible. It was found that the shortest possible sentences were often imposed upon the dangerous, habitual and professional offenders while much longer sentences were frequently imposed upon the relatively harmless, situational and occasional offenders. In other words, the habitual and professional offenders received sentences which were far too brief to permit the achievement of desired goals of rehabilitation; whereas, disproportionately long terms of imprisonment were imposed upon the situational and occasional offenders who, conceivably, might have been treated in the community under probationary supervision with less expense to the state and less opportunity for moral contagion. It is recognized, of course, that courts frequently are handicapped because little or no verified information concerning an offender's social, mental, or criminal history is supplied to guide them in imposing sentence. This situation may exist because probation officers have an excessive case load or because they are poorly directed, untrained, or incompetent. On the other hand, it is not unlikely that judges themselves may fail to devote enough time to the study of probation officers' reports even though the reports are fairly complete. Indeed, it is difficult to believe that many of the sentences given during this period under consideration would have been given if all the facts gathered *after commitment* to Massachusetts State Prison were fully known to the court *before sentence*.

[3] American Bar Association, Section of Criminal Law. Program and Committee Reports. July, 1939, San Francisco, California. Pp. 37-39. Report of the Committee on Sentencing, Probation, Prisons, and Parole, Wayne L. Morse, Chairman.

[4] Op. cit., p. 39.

If the protection of society is the principal objective of a sentence to a penal or correctional institution—and with this there seems to be no disagreement—then, at least in the instances cited above, society does not get the maximum protection which it has every reason to expect from its costly criminal courts. Among the numerous factors which contribute to the apparent inefficiency and unfairness of the judicial discretion inherent in the sentencing function, the following appear uppermost: the absence of an established tribunal to review sentences either automatically or on appeal; the presence of serious statutory limits upon the maximum sentence which can be imposed for certain felonies; occasional publicity drives on certain types of criminals (such as sex offenders); the personal biases and prejudices of individual sentencing judges; and insufficient training of judges in the interpretation of materials involving medical, psychiatric, psychometric, and sociologic data. Likewise, as a body of responsible officials engaged in the administration of criminal justice, judges, by not customarily writing opinions to explain and justify the sentences they impose, have not only prevented any check upon their exercise of discretion but also have made it impossible to develop a body of experience from which scientific sentencing principles might be developed. Is it any wonder that so eminent a criminologist as Sheldon Glueck is forced to conclude that "in all the years that judges have been imposing sentences they have made little contribution to a possible science of penology. They have been going through the motions of 'individualizing punishment.' Some have gone to great pains to understand the motivation of the misconduct they are being asked to deal with; others have disgraced their office by imposing some drastic or dramatic sentence to 'fit the crime' by way of misplaced poetic justice. But as a class they have failed to develop a method of comparing the individual cases with similar ones to evolve a useful typology of both offenders and sentences."[5]

II.

At this point one may well inquire as to the nature of the evidence adduced in support of these claims. It has already been indicated that the data for the present study comprise the sentences of felons committed to Massachusetts State Prison during a recent five-year period.[6] Because of the preponderance of accurate information available from the well-verified social case histories of prisoners prepared by the Division of Classification of the Massachusetts Department of Correction, it seemed feasible to use this information as the basis for determining to what extent illogical variations in sentences do occur. Accordingly, a careful analysis was made of the case histories of 1,661 criminals, representing the total number committed to Massachusetts State Prison during a period of five years. Sentences resting upon considerations not pertinent to the facts of the complete social case

[5] Glueck, Sheldon. "Crime and Justice," p. 129, Boston, 1936.

[6] In order to preserve the anonymity of the prisoners involved, the actual period of years must remain unidentified.

history were recognized, beyond a reasonable doubt, in some 333 cases (or 20.04% of the total cases). The sentences in the remaining eighty per cent of the cases bore in greater or lesser degree some reasonable relationship to the facts disclosed by the case histories, although it is by no means true that these sentences were faultless.

Table I below shows a classification by general offenses of the 333 cases selected for their illogical sentences:[7]

TABLE I

Offense	*No. of Prisoners*
Burglary	113
Robbery	86
Sex	49
Forgery and Swindling	20
Felonious assaults	19
Carrying weapons	12
Miscellaneous	34
Total	333

An analysis of these 333 cases according to their respective classifications revealed, first, that many dangerous, habitual and professional offenders received too short a sentence to protect society adequately; that is, a sentence shorter than what a careful social prognosis based upon verified facts of the case history would indicate. For example, at least seventy-two of the one-hundred-thirteen burglars classified in Table I were of the habitual and professional type of offender.[8] More than half of these habitual and professional offenders received as the maximum part of their sentence five years or less, while many received as the minimum part of their sentence two-and-one-half years, the shortest possible State Prison term for any offense.[9] Except in certain instances where a maximum term of twenty years is permitted, the Massachusetts statutes for most types of burglary permit a maximum sentence of ten years. A landmark of judicial indiscretion, so far as sentence is concerned, is the following history of an habitual burglar who upon his *fifth* commitment to State Prison received a sentence of 2½-3 years.

> Subject, who is white, was born in Boston, Mass., Dec. 26, 1870, of an Irish mother and a father whose nativity is unknown. When subject was only three years old his father died, leaving the mother to support subject and his sister,

[7] See Appendix #1 for list of actual offenses included in each group heading.

[8] The following definitions were compiled for research use by Frank Loveland, Jr., formerly Director of the Division of Classification of the Massachusetts Department of Correction. If an offender is known to have committed offenses on the average of one or more a year while at large, he falls into the habitual class. It does not mean that he must have appeared in court more than once a year, but rather that the total number of offenses for which he has been convicted or that he has admitted (including the present series) should average one a year. If the offender has served more than one sentence in a major institution, that is, a state or federal prison or reformatory, or more than three sentences in minor institutions, that is, a juvenile or county institution, or state farm, or a sentence in a major institution and one or more in minor institutions, he is classified as an habitual offender. A professional offender is one who gains the major portion of his support or attempts to gain the major portion of his support from illegal activities, either predatory offenses or by an illegal occupation. If, for example, the offender holds legitimate employment but uses this employment as a "blind" for illegal activities or to assist him in engaging in illegal activities, he is classified as a professional offender.

[9] State Prison sentences for less than two and one-half years are occasionally imposed by the Courts for escaping from prison. These sentences are usually consecutive; that is, they run from and after the expiration of the original State Prison sentence. Each prisoner must serve two-thirds of his minimum sentence before being eligible for release consideration. If his minimum sentence is just two-and-one-half years, a prisoner must serve the full two-and-one-half years before he is eligible for release consideration.

as well as two children by a previous marriage. Although his mother remarried, subject's stepfather was an alcoholic and a poor provider and died before subject was ten years of age. At about this time, subject became involved in his first delinquency and was sent to a reform school for about a year, being returned there for about two years before reaching the age of fourteen. Then, beginning at the age of sixteen, with a commitment to Massachusetts Reformatory for forgery, he began a criminal career which has caused him to spend at least twenty-eight years, or three-fifths of his last forty-five years, in penal and correctional institutions. These confinements have included two commitments to Mass. Reformatory and four commitments to Mass. State Prison not counting the present commitment. One parole from the Reformatory and one parole from State Prison have each been revoked. Between the ages of forty-three and fifty-one, he avoided imprisonment but was convicted fourteen times for drunkenness and was placed on probation for breaking and entering. Except for that eight-year period, since the age of sixteen, he has never spent slightly over a year consecutively in the community, except for a two-year period just preceding his present arrest, and during the latter period he was forced to spend five months in a public charitable institution. His offenses have included drunkenness, carnal abuse, assault to rape, forgery, and burglary, three of the latter offenses (including the present offense) resulting in State Prison sentences. Subject's present offense was the theft of ninety-two dresses. For this he received a sentence of 2½-3 years. Except for odd jobs as janitor, porter, sectionhand, laborer and general repairman, which are for the most part unverified employments, subject's only satisfactory verified employment was his service of six months in the Canadian Army, serving in England during the World War. He made a forced marriage in 1897, but his wife later divorced him with his consent because he was serving another State Prison term. Their only child died at three. At the time of his most recent commitment to Mass. State Prison, subject had no family ties. His intelligence is regarded as low average (I. Q. 85) and his behavior while at large in the community has consistently demonstrated that he is a confirmed criminal.

Of the eighty-six robbers so classified in Table I, twenty-six or nearly one-third were found to be habitual offenders who received sentences which were far too short to protect society adequately. For example, the 4-5 year sentence imposed upon the habitual criminal whose case history is summarized below represents an exercise of judicial discretion difficult to justify in view of the fact that Massachusetts statutes permit a maximum term of any number of years up to and including life upon conviction of robbery armed.

Subject, age twenty-three, white and single, was born in South Boston, Mass., on Dec. 27, 1910, the only one of five children by his American-born parents to have survived infancy. Subject's father, a teamster and an alcoholic individual, deserted his family in 1913 and has falsely claimed to have procured a divorce from subject's mother in 1915. In 1925, subject's father bigamously married his second wife and two illegitimate children were born to them. This wife was a very poor character and has a court record for drunkenness, and was given a one-month House of Correction commitment. Later subject's father died and his second wife is now residing in Boston.

Following the desertion of her husband in 1913, subject's mother met another man, a very unstable individual, who had already served a commitment to Mass. Reformatory. In 1913, she went to New York City to live with him and while there she supported him through prostitution. In 1917, she bigamously married him, and by this union there have been four children, two of whom are now living, one being a twelve-year old boy who has a court record for four criminal offenses, and who is now confined in the Wrentham

State School for the Feebleminded. Subject's mother's second marriage proved to be very unsuccessful in that her husband never supported her and was consistently involved in criminal offenses. He has served two House of Correction sentences, escaping from one, one commitment to Mass. Reformatory, and two sentences to Sing Sing Prison. The second sentence was for fifteen years and the offense, fatally stabbing a man, occurred in New York City in 1929 while he was living with a common-law wife. He was paroled from this sentence to Sing Sing in 1936 at which time he went to live with subject's mother in Boston. Subject's mother has also borne a very poor reputation throughout her life and has been alcoholic for over twenty years. On thirteen occasions she has appeared in court for drunkenness, her last court appearance being in the latter part of 1934, when she received a suspended jail sentence. She later defaulted and this default is still in order.

In 1911, shortly after subject's birth, he was placed with his maternal grandmother in Boston, and has spent most of his life at her home. She is a woman of apparently good character and her second husband rarely provided for her or her family with the result that she neglected her home and her own two children and subject in order that she might work for their support. During subject's infancy and adolescence, her home was usually found by social agencies to be in a very dirty condition.

On 9-13-15, at the age of four, subject entered grammar school and for nine years attended three schools in Boston, completing grade six. In general, he was a poor scholar and a conduct problem in school, being compelled to repeat one grade. During the latter part of his school attendance, in 1924, he became a definite behavior problem, and as a result was committed to the Boston Psychopathic Hospital, where he remained about two weeks, being diagnosed as not psychotic but as having a conduct disorder.

At the age of 13, on April 24, 1924, subject made his first court appearance, when he was arraigned for needlessly stealing a bicycle. As a result of this offense he received a suspended sentence to the Lyman School for Boys. During the next six months he persistently associated with a gang of juvenile delinquents in his home district and on Oct. 9, 1924 he again appeared in court on a charge of breaking into a store, from which he stole tonic, candy, cigarettes, etc. Investigation into his home conditions at this time revealed that he had been receiving no home training whatsoever, and that he had been constantly associating with other delinquent youths. On Oct. 23, 1924, the charge against him of breaking and entering was filed and he was committed to Lyman School for Boys, his previous suspended sentence being revoked. Fourteen months later, he was paroled to his grandmother's home in Roxbury, and for the next four months he worked in various Boston firms as a messenger boy. He claims to have worked for the ensuing two years and two months, down to Oct. 1926, in New York City as iron worker. In Nov. 1926 he left New York and went to South Carolina where on Nov. 22, 1926, at Parris Island, he enlisted in the United States Marine Corps under his half-uncle's name. For the next two years and seven months, he served as private in the Marine Corps and during this time he was tried on four occasions by Deck Court and twice by Court Martial for offenses of petty thievery, intoxication, creating a disturbance and failure to report for venereal roll call. His conduct was regarded as very unsatisfactory throughout his service, and on June 24, 1929 he was discharged from the Marine Corps without honor, his character being rated as "bad." Following this discharge and for the next two months he lived with his grandmother again and worked as a painter. He then returned to New York in August 1929, going to Brooklyn, where he claims to have worked as a soap mixer. In Dec. 1929, he returned to Massachusetts and appeared in court on Dec. 16, 1929 on a charge of drunkenness, larceny, and robbery. This offense was a typical "drunk rolling." On Jan. 10, 1930, in Suffolk Superior Court, he was convicted on a charge of robbery and committed to Mass. Reformatory to serve a five-year indefinite term. At that in-

stitution, his conduct record was very poor and on thirteen occasions he was reported for institutional infractions such as being out of place, shirking, injuring property, committing an indecent and immoral act with another inmate. After serving three years and three months of this sentence, subject was released on parole and subsequently enrolled in the Civilian Conservation Corps. After two months' service, he was dishonorably discharged because of repeated absences without leave. For the next eight months he lived with his mother and worked off and on as a laborer on various relief projects. Then he begain to associate with another Mass. Reformatory parolee, and together they committed the present offense, when they held up the manager of a chain grocery store, robbing him of thirty-five dollars in money. Both subject and his codefendant were arrested several days after the offense, and each pleaded guilty to a charge of robbery armed, following which they received a sentence of 4-5 years at Mass. State Prison.

In spite of subject's average adult intelligence (I. Q. 88), his prognosis for future adjustment in the community is very poor because of his general instability, persistent criminal behavior, lack of industrial stability, and absence of favorable home ties.

Likewise difficult to justify on any logical basis are the sentences accorded to the following habitual offenders whose cases illustrate sex offenses, forgery, felonious assaults, weapon carrying, and miscellaneous offenses.

Sex Offenses

Subject, age thirty-nine at commitment, white and unmarried, the next oldest of five children of Greek parentage, is the only member of his family who has come to the United States. Since his arrival here he has worked in restaurants and as a barber but his employment has been periodically interrupted by commitments to penal institutions, mainly for offenses of a sexual nature.

Subject's first known court appearance in the United States was in Boston at the age of twenty-one, when on May 24, 1917, he was arraigned in court for abuse of a female child. Subject was sentenced to Mass. Reformatory for a five year indefinite term and was paroled thirteen months later. After subject defaulted on his arraignment for the present offense of abuse of a female child in 1924, he became involved in an insurance fraud in Harrisburg, Pa., where he attempted to collect $4500 insurance after a body had been found burned beyond recognition in an automobile. A charge of homicide was placed against subject but the case was dismissed for lack of evidence. Several months later he was sentenced to the Jackson State Prison in Michigan for statutory rape after he was convicted of sexual intercourse with a fifteen-year old girl whom he had promised to marry. After serving four years of a 5-10 year sentence, subject was paroled and later sentenced to ninety days in Detroit House of Correction for obscene conduct. He was finally apprehended in Detroit as a fugitive from justice and released to the Massachusetts authorities for prosecution on the 1924 offense (the present offense) which involved relations with a fifteen year old Charlestown girl. Subject received a 3-7 year sentence for this offense.

Subject is of average adult intelligence, is illiterate, has no home ties in the United States, and has demonstrated persistent criminal behavior in the community, and is classified as an habitual sex offender. Prognosis, therefore, is very poor.

Forgery

Subject, white, age forty-four on commitment, the youngest of two children of American-born Jewish parents, was born in New York City on May 19, 1890. His parents were fairly wealthy and the family bore an excellent reputation in Boston and New York. When subject's father died in 1910 he left subject about $50,000 which was to be paid out in small sums until subject was forty years of age. Subject squan-

dered all his money by fast living and gambling and a substantial sum was used in paying lawyer's fees in order to get him out of trouble. He completed two years of high school in Boston and his father then encouraged him to attend a business college but subject refused. His father tried to have him learn the woolen business but subject refused. Nothing in subject's employment history could be verified although he does not admit more than a total of about sixteen months employment as a clerk or salesman. He has married twice and lived for a period of several years with a third woman. His first wife, whom he married in 1911, was a chorus girl who divorced him when he was in prison in 1918 in Michigan. His present wife was a nurse whom he met in a New York hospital while he was being held for observation in 1919 and whom he married the day after he was released from Sing Sing in 1920. She bore him one child and now refuses to have anything to do with him. In 1923 subject met a waitress in Philadelphia and for two years she lived with him, until he was sent to prison in 1926.

His first arrest occurred in Chicago at the age of twenty-three in 1913, when he served sixty days for forgery. Two months later he was sentenced to 2½ years at Elmira Reformatory for attempted grand larceny, and in January 1915 he was paroled. In December of that year, for armed robbery, he was sentenced to serve 3-5 years in Michigan State Prison whence he was paroled to the Boston Police in January 1919 for charges of forgery, uttering and larceny. Restitution was made and the case was dismissed in Boston. Two months later subject became involved in forgery and larceny charges in Brooklyn and was committed to the Bellevue Hospital for observation but was released as not insane, and for these offenses he was sent to Sing Sing Prison for 2½ years. He was discharged in Dec. 1920, and in 1921 he was sentenced to six months in Louisiana State Penitentiary for obtaining money by false pretenses. For a period of four years, subject managed to avoid arrest although he lived by the proceeds from gambling and horse racing. In January 1926 he was sentenced to the California State Prison to serve 1-14 years, for passing bad checks. Prior to his removal to the prison, he, with several others, smuggled saws into the jail but these proved to be useless. An attempt was made to smuggle in a revolver, but this was thwarted. He was released, and in September of the same year he was sentenced from the Suffolk Superior Court in Boston to serve 5-7 years in Mass. State Prison for uttering a forged instrument and larceny. Subject's offenses involved either passing worthless checks on people whom he had befriended or who were known to members of his family, or, as in the present offense, by posing as a wealthy business man to real estate agents whom he contacted for the purpose of obtaining locations in which to open his business. He would then have the real estate agent recommend a bank and he would have the latter introduce him to the officials. Subject would then make a large check deposit drawn on a distant bank in which he had no account, and ask the officials to introduce him to the tellers and cashier. As soon as the bank would be open on the following morning, and before his deposit check could be cleared, subject would ask the teller to cash a check and if the latter would do so unhesitatingly, subject would take the money. Otherwise, if there were any hesitation he would leave the bank on the pretense that he was going to buy a cigar and he would then leave town. Since his first arrest in 1913 he had not been in the community for more than a total of four years. He was never reported for any infractions of conduct in any of the institutions in which he was committed with the exception of his being involved in an attempted escape in the San Diego Jail in April, 1926.

He is a clever, deceiving and irresponsible individual who can gain one's confidence very easily and has many times taken advantage of this to obtain money under false pretenses. He is very well institutionalized and nonvicious. He is of high average adult in-

telligence (I. Q. 101) and is not psychotic.[10]

Felonious Assaults

Subject is a white, unmarried offender, who was born in Boston on Oct. 24, 1903, the fifth of eight children of Italian parentage to survive infancy. He was brought up in the West End of Boston where he early displayed delinquent traits. His father was actively engaged in business, and his probably feebleminded mother failed to discipline him properly as a child. Only one of subject's siblings, however, has shown a similarly lawless disposition.

After completing four grades of school in seven years, subject made his first court appearance at the age of thirteen for larceny. In all, he was arraigned twenty times in the eighteen years from 1917 to 1935. The most serious charges have been violation of the narcotics law, larceny and attempted larceny, and assault and battery (on at least six occasions). He has served four House of Correction terms, one jail term and sentences of one year each to the Atlanta Penitentiary; and he has paid $80 in fines, divided among four offenses. Subject characteristically confessed to only four previous offenses on admission to Mass. State Prison. Many of his crimes have been relatively minor, but they have gained him a distinct notoriety with the Boston Police. He was convicted at least twice before of assaultive offenses arising at the scene of the present offense. The latter consists of subject's stabbing a man slightly in a Boston restaurant during a brawl which was started by subject and two of his companions.

He has had very little verifiable legitimate employment and is known to have sold drugs during 1926 and 1927. He enlisted in the Navy in 1919, using a brother's name and birth certificate, and was given an inaptitude discharge when it was learned that he was under age. On the two occasions in recent years that subject has been on probation, he has lived up to the requirements. He is of inferior adult intelligence (M. A. 11 yrs. 5 mos., I. Q. 71). Because of his recent persistent assaultive offenses, he can be classified as a somewhat vicious person.

In view of his inferior adult intelligence, well-established habits of dishonest living, past persistent criminality and the failure of previous punishments to deter him from repeating the crime for which he is now serving, subject's prognosis must be considered very poor.

Carrying Weapons

Subject was born August 1, 1909, has never lived elsewhere than in the North End of Boston, and is the son of an Italian father and Irish mother. His parents are honest, literate, industrious, Americanized people, law-abiding and anxious to have their children do well. His father is a teamster and truckdriver. His mother was a laundress and factory operative before marriage and has worked out some since marriage in times of special family stress. Subject is the second of seven children. One younger brother, delinquent, bids fair to become a criminal; the other children lack industrial stability but have kept out of trouble.

Subject graduated from parochial school with a fair record. However, he would not work even when employment was obtained for him. He first appeared in the Juvenile Court for larceny when twelve years old, one of a group of little boys who had broken into and entered a store and stolen cigarettes which they sold. On three subsequent occasions he appeared in the Juvenile Court, once with other boys for holding up and robbing a man; once detected by the police robbing a drunken man. When even his father's patience ceased and he was threatened with the Industrial School, he obtained a position as errand boy in a wallpaper shop and remained thirty-seven months, advancing to position of order clerk. He was laid off through reorganization of the business but left with an excellent record, was well regarded and well liked. Again he would not work and has held no legitimate business since that time, a period of over three years.

[10] The maximum sentence provided by the statutes for uttering a forged instrument and larceny is ten years.

He professes to have subsequently carried on an extensive bootlegging business, but in the opinion of the police he has been only a tool for bootleggers, has "taken the rap" for them and aspired to be a "big shot."

Although he kept out of trouble while employed, a few weeks after his employment terminated he was arrested for assault and battery. Since that time he has been arrested as follows: on four later occasions during 1929, twice in 1930, three times in 1931 for violation of the liquor laws, idle and disorderly conduct, assault to rob, breaking and entering. He has paid frequent fines and on four occasions has been committed to the House of Correction.

In his recent activities he has been an associate of a notorious band of North End gangsters and is regarded as the gun-toter for a gang chief. He was arrested for the present offense following the murder of two gangsters of an opposing party. He was first charged with murder but dismissed on this charge for lack of evidence and committed for carrying *three loaded revolvers.* His presentence is 2½-3½ years.

In view of the seriousness of the present offense alone, it is most difficult to understand why he did not receive the maximum penalty of five years instead of three-and-one-half years.

Miscellaneous Offenses

Subject, age thirty-one and unmarried, was born in Quincy, Mass., on Oct. 30, 1901, the second of five children of hardworking and respectable Finnish parents. His father, a granite worker by occupation, provided well for his family, but non-understanding of English lessened the effectiveness of his training of his children. Subject's two brothers are alcoholic and have made court appearances for offenses in which the excessive use of alcohol has played a large part. His youngest brother, who was raised in Finland, came to the United States a few years ago, and since then has become involved in frequent offenses, mostly violations of the Motor Vehicle Laws, and has served four commitments in the House of Correction. Subject's two sisters, who are trained nurses and married to doctors, are of good character, although one of them was arrested in Boston some years ago for drunkenness. Before subject was old enough to attend school, he became a behavior problem at home, because of his association with a group of youths whose practice it was to steal small articles from neighbors.

In 1907, at the age of five, subject entered grammar school in Quincy and during the next four years he attended two schools in that city, completing grade three, and attending grade four for almost a year. In 1910, when he was eight years old, his mother passed away, following which the family was dissolved and the children were placed with relatives. One year later, subject became a persistent truant from school and finally, on May 27, 1911, at the age of nine, he made his first court appearance in juvenile court on a charge of truancy. Upon being adjudged delinquent, he was committed to the Union County Training School where he received education through the eighth grade and where he remained because of poor conduct, for four years and three months before being released on parole. Shortly after he was committed to this school, with his oldest sister, then aged twelve, acting as housekeeper, the members of his family were reunited in the family home. In 1915, at about the time subject was paroled from the Training School, his father was married for a second time, to a Finnish woman of good character. For a time, subject adjusted himself satisfactorily in his home and in the community, and in the fall of 1915 he entered the freshman year of high school where he received his final education, attending grade nine for six months, although with a poor scholastic record.

One month after leaving school, he again began to show delinquent traits and on April 14, 1916, he received a suspended sentence to the Lyman School for Boys upon conviction of larceny. Five months later, at a time of his third court appearance, he was adjudged a delinquent and was committed to Shirley Industrial School. Since that time, and not including the present offense, he has made nineteen court

appearances for twenty-three charges ranging from larceny and forgery to carrying a loaded revolver and escape from a house of correction. He has served seven commitments to houses of correction, two commitments to a county jail, and in 1927, on conviction of larceny of an auto, he was committed to the Massachusetts State Prison where he served five years of a 5-7 year sentence. On three occasions he has escaped from a house of correction and on one occasion he made a successful escape while awaiting trial in a courthouse. His criminality has not been confined to Massachusetts, as he has been arrested six times in other states. From the time of his first court appearance up to the time of the commission of the present offense, a period of twenty-one years and six months, he has spent, not including the time consumed while awaiting trial, a total of approximately sixteen years and four months in various institutions..

Because of his persistent criminal offenses and subsequent commitments, subject's industrial record is very meagre. He has, however, at very infrequent intervals, been employed as lineman's helper, shipfitter's helper, helper on a truck, and granite worker. At no time has he ever shown stability, as his periods of employment have always been of short duration. Even when under supervision, as when he was on parole from Massachusetts State Prison, he has shown himself to be an ambitionless, unstable workman, as he quit the work obtained for him, falsely claiming ill health, and permitted himself to be supported by charity and relatives.

The present offense occurred in Quincy, Mass., a little less than nine months after subject was released on parole from Massachusetts State Prison, and consists of his stealing dresses, overcoats, and lawn sprinklers from the home of one of his friends, following a drinking party at the latter's house. After committing this offense, subject removed the stolen articles to the home of one of his brothers, where he had been living, and then disappeared. Upon learning of the offense, the Quincy Police went to the home of subject's brother, and after a search, found the stolen property and also uncovered certain office equipment which had been stolen one day previous from a Quincy granite company. Warrants charging subject with having committed these two offenses were issued, while subject's two brothers were arrested, one on a charge of receiving stolen goods and the other on a charge of larceny, namely, the larceny with subject of clothes and sprinklers. The charge against one brother was later dismissed, and the other brother received two suspended sentences of three months each in the House of Correction upon conviction of two charges against him. The whereabouts of subject was not known until three weeks later when he was arrested in Central Falls, R. I., for an attempt to break and enter. While awaiting trial in that State, he escaped from the detention room of the courthouse, but a month later he was arrested in Pittsburgh, Pa., for a larceny. He was discharged by the Pittsburgh authorities and was delivered to the Quincy Police, who returned with him to Massachusetts. After being indicted by the Grand Jury, he pleaded guilty in Norfolk Superior Court, to charges of larceny, and breaking, entering and larceny, the latter charge resulting from the break committed in the granite company property. On the charge of larceny, he was sentenced to serve 2½-3 years in Massachusetts State Prison, while the second charge was filed.

Subject is a negative, ambitionless, excusing individual, who is totally lacking in self-criticism and whose attitude toward society and its laws is one of antagonism. His traits of criminality are firmly established and while his criminal offenses have been, for the most part, of a comparatively non-serious nature, they have been so persistent throughout the past seventeen years that he must be classified as an habitual criminal requiring custodial care. Although alcohol has never played a large part in his offenses, he has admitted the use of drugs over a period of six years, part of which occurred while he was serving his previous commitment in Massachusetts State Prison. He is of ~~average adult intelligence~~

(I. Q. 91) and although he is not psychotic at the present time, there is a possibility of an incipient psychosis, probably of a paranoid nature. He is totally lacking in family ties, as his brothers, who are themselves of an unstable type, apparently have no interest in him, while his stepmother has stated that she wishes to have nothing further to do with him.

A second major result of this investigation of Massachusetts sentencing practice was the discovery that the twenty-eight prisoners whose offenses could be classified as the accidental and occasional type received far longer sentences than many of the professional and habitual offenders.[11] There is little doubt that the sentence imposed in the following case satisfied neither the prisoner's nor the public's conception of justice; nor does it satisfactorily reflect "individualization of punishment."

Subject, twenty-four years old, was born in Syracuse, N. Y., on July 12, 1910. Before he became three years old his parents died and he and his brother were placed in an orphanage in Oklahoma. When four years old he was adopted and was reared by foster parents who are of good reputation. Subject, as a child, had rickets and when fifteen years old received an injury which has permanently affected his left leg, making him lame. Recently he has also suffered from a rectal fistula.

During early youth subject moved about in Oklahoma, California and Oregon, with his foster parents. He claims to have completed the eighth grade before his leg was injured. Immediately thereafter he spent considerable time in hospitals and for months used crutches. In time he was able to help his foster-father at gladioli farming and also did a little work in a dairy and in a cannery.

Subject says that he left Oklahoma and came to Lawrence, Mass., to stay with a paternal uncle and aunt. He worked with them in the Salvation Army driving a truck. When they were transferred to Bangor, Me., subject accompanied them and continued the same work. He soon became dissatisfied with the strict discipline, over-religious atmosphere and low pay, and went to Lawrence. Here he did general work in a furniture store for about a month and then quit because of low pay. He started to hitch-hike back to his foster parents in Oklahoma but was picked up by two young men who were driving back towards Lawrence. The three laid plans for a robbery. Subject held up a chain store collector with a revolver, secured about $300, and escaped with the aid of his two companions, with whom he shared the money. Then he returned to Oklahoma, though on the way he was hospitalized for a rectal fistula. A few months after subject arrived at his foster parents', a friend in Lawrence persuaded him to return. He did so, but again found no satisfactory work. He attempted to hold up the same collector he had previously robbed but was caught, and received sentences for both crimes, i.e., 12-18 years for armed robbery, and 3-5 years from and after, for attempting armed robbery (totalling 15-23 years).

He appears to be a genuinely cooperative individual who speaks with regret of his two present offenses and describes his past history with complete frankness. He talks slowly and deliberately, but nevertheless logically and with some insight. His only prior offense was a conviction for illegally riding a freight train, and for this he was fined. Although he scored inferior level of intelligence (I. Q. 85) the psychometrist did not regard the results as representative as subject was generally regarded as of high average adult intelligence.

[11] Accidental and occasional offenders include (1) those who have no previous convictions except for minor traffic violations or violations of minor city ordinances; and (2) those who have convictions for offenses committed on the average of less than one a year while at large (calculation being made from date of first conviction) and who cannot be otherwise classified. Definition compiled by Frank Loveland, Jr. (See footnote, 6, p. 5).

A third distinct result of the present study concerns the feebleminded criminals who, though they may be dangerous, habitual offenders when at large in the community, are for the most part well-behaved inmates when confined. Thirty-nine of the 333 cases were found to belong to the definitely feebleminded group for whom prolonged, if not permanent, custodial care appears to be the only adequate treatment. The following case is an illustration of the inadequacy of anything but permanent custodial care for this type of offender:

> Subject, age twenty-seven, was born in Boston on March 24, 1907, of native parents. He is the younger of two children to have survived infancy. His father was a clerk and night watchman, apparently unassuming and refined, probably not a very satisfactory wage earner, as his family was periodically dependent. He died in 1929 of heart disease. Subject's mother has long been suspicious, discourteous, and demanding towards the many organizations that have dealt with her, and she has always refused to admit any fault existing in subject, her only son. Subject's sister has apparently adjusted well on the whole, although she is separated from her husband.
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> The family moved frequently and received public aid from the time that subject was seven. At that age, also, subject began persistent truancy. Just before his eighth birthday he made his first court appearance, being placed on probation for larceny, after having sold newspapers which had been stolen. His father said subject's misbehavior had been very extensive and blamed the leniency of subject's mother for this. At the ages of ten, eleven and twelve, subject made additional court appearances for petty larceny, throwing missiles, "bunking out," etc., and was each time placed on probation or the case was filed. To curb his truancy, school misconduct, lying and general untrustworthiness, many devices were tried, and even whipping was resorted to, but all with no satisfactory result. His mother strongly defended him and was twice reported to have directed him in delinquency, i.e., begging or picking pockets.
>
> Despite his delinquencies and truancy, subject was near the completion of the eighth grade when he left school to work when fifteen. However, no information is available as to his scholastic rating, and it is possible, if not probable, that he was promoted for reasons other than good scholarship. Upon leaving school he worked intermittently as messenger, but demonstrated laziness, and seven months after leaving school was committed to Shirley School, from which he escaped once. He was paroled after seven months but soon began a series of unlawful appropriations of autos, and larcenies of goods, resulting in one probation, three House of Correction terms, and a sentence to Massachusetts Reformatory, the latter being appealed and later dismissed because of subject's indictment on charges of armed robbery and the taking of autos. On the robbery charges he was sentenced to the Defective Delinquent Colony at Bridgewater being then eighteen years old. His youthful companions were given long Prison terms.
>
> Subject was confined in the Defective Delinquent Colony for eight years and three months and had a fair conduct record and rather satisfactory employment record of shoe repairer. His mother, and interested persons, in political circles, attempted periodically to procure his release. In 1931 and 1932 reports of the institution stated that his prospects for successful community adjustment were very questionable, but in March, 1934, he was released by order of the court when he was adjudged to be a responsible offender because four different psychometric examinations rated him as having an I. Q. between 70 and 76 which, from the technical and purely intellectual point of view, raised him just over the feebleminded level. His release was unexpected on the part of his mother and sister (his father having died in 1929), and hence neither home nor employment was ready for him, as his mother was living with his sister and the latter's husband. The latter ob-

jected to the subject's presence in the home as a dependant, for subject worked only a few days.

Within two months after his release from the Defective Delinquent Colony, he participated in the offenses causing his present commitment. In both cases for which he is now serving sentence, he was accompanied by two companions. They stole cars on two late evenings in Somerville and drove to Boston where they robbed two elderly men who were walking on the street. In one case they stole six dollars in cash and a watch valued at fifty dollars, and in the other case they robbed their victims of about twenty-five dollars. In the latter case they also administered a beating to their victim. Both victims stated that they were threatened with pistols. Subject and his companions were arrested as suspicious persons in a stolen car, while they were preparing to commit another holdup. Subject pleaded guilty in Suffolk Superior Court and was sentenced to serve 14-16 years for armed robbery and a concurrent term of 8-10 years for robbery. A charge of using an auto without authority was filed. Subject's codefendants were committed to Massachusetts Reformatory on two concurrent terms of eight years for the same offense as subject was sentenced on.

Subject appears to be a friendly and cooperative person when confined, but when in the community he has demonstrated frequently very poor judgment, no ambition, no foresight and no ability to resist temptations for "easy money." Three-quarters of his time between the ages of fifteen and twenty-seven was spent in penal or correctional institutions. The fact that he committed his present offenses within two months of his release from an eight-year term is clear indication of his inability to be deterred from crime by means of incarceration, and many periods on probation have also failed to control him. Psychometric examination at this institution rated him with an I. Q. of 82, but this is not believed representative because he has been previously tested so many times. He is believed to be probably of moron level of intelligence. He seems to possess no assets upon which to base rehabilitative treatment, unless good health be considered as such. His only immediate physical need is for dental attention. Because of the length of his sentence and his very suggestible nature he should be regarded as a maximum security risk, and he is a case for permanent custodial care from a social standpoint. His mother is loyal to him but this is a serious liability rather than a helpful factor.

A fourth and final result yielded by the present study was the disclosure that no fewer than thirty-four *different sentences* were imposed upon *similar criminals* for similar crimes; while seventeen *similar sentences* were imposed upon *different criminals* for similar crimes. The sentences varied from two-and-a-half to three years at one extreme to terms of sixty to seventy-five years as well as two concurrent life sentences at the other extreme. As Glueck aptly observes: "Even if the best available information as to the characteristics and background of the offenders were laid before judges as a basis for the exercise of their discretion—which is not often the case—they could not reasonably tell in advance that it would take X from two-and-a-half to three years to reform, Y from two-and-a-half to three-and-a-half; A from forty to forty-five; B from forty-two to forty-five; or, if deterrence be stressed, that X's punishment should be half a year shorter or longer than Y's because they require these different sentences to prevent them from repeating their crimes, or because the public requires this fine distinction to deter it from violating the respective laws. Such ultra-precision is on its face irrational."[12]

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[12] Glueck, Sheldon. "Crime and Justice," p. 122, Boston, 1936.

III.

In view of the findings indicated by this analysis of existing sentencing practices in Massachusetts, it seems reasonable to plan a more scientific and just individualization of sentences. Certain features of an improved system are therefore indicated.

First, to obtain closer agreement among judges as to the fundamental purpose of a sentence to a penal or correctional institution and as to the kinds of sentences which best serve this purpose, it has been suggested that the Chief Justice of the Superior Courts in Massachusetts might call a conference or a series of conferences to which not only the Superior Court Judges would be invited but also correctional administrators (including representatives of probation and parole divisions and heads of penal institutions), physicians, psychiatrists, police executives, and representatives of civic, educational, and federal organizations directly concerned with policies of handling criminal offenders.

Secondly, as the result of extensive research dealing with the end-results of correctional procedures with criminals in Massachusetts, Sheldon Glueck recommends serious consideration of a scientific means of distinguishing between various classes of offenders and predicting their subsequent careers when subjected to one form of penocorrectional treatment as opposed to another. Specifically, Dr. Glueck suggests that the sentencing function be separated from the guilt-finding function in the criminal proceedings in order to permit a tribunal composed of a psychiatrist or psychologist, a sociologist or educator and the trial judge to determine the appropriate treatment for an offender, based upon adequate investigation by case-workers. The treatment or sentencing tribunal would file a written decision supporting its action in each case. As Dr. Glueck points out, this plan pre-supposes the operation of methods for the observation of an offender's progress under the specified form of treatment, thus enabling periodic review in each case and possible modification of the treatment by the tribunal. As safeguards against the possible arbitrary and unjust action of the treatment tribunal, Dr. Glueck urges that legislation provide for appellate review of the tribunal's decision, that the defendant be permitted to have counsel and witnesses at the treatment hearing and that counsel be permitted to examine the psychiatric and sociologic reports filed with the tribunal, and that the treatment tribunal be compelled to review every case at least once within a given period of time as a matter of the defendant's right. A fundamental prerequisite to the effective operation of Dr. Glueck's plan would be the empowering of a treatment tribunal to impose a *wholly indeterminate* sentence. Thus, the dangerous, habitual and professional offenders might conceivably remain under supervision either in the institution or on parole throughout their lives while the most promising rehabilitative prospects might be discharged after relatively short periods of supervision.[13] Accompanying this plan of a treatment tribunal Dr. Glueck advocates the use of

[13] Glueck, Sheldon. "Crime and Justice," pp. 220-234, Boston, 1936.

prognostic tables based on such factors as mental makeup, industrial habits, economic responsibility, attitude toward the family, frequency of prior crimes, former penal experiences—factors which it has been fully demonstrated[14] are much more significant in forecasting behavior than either the type or the seriousness of the crime for which the offender happens to be before the court. In the opinion of Judge Ulman of the Supreme Court in Baltimore, Maryland, the value of the Glueck's prediction tables lies in their tendency to focus attention upon the haphazard operation of the "hunch" system, and upon the almost entire lack of co-ordination between the imposition of sentence and any objective visualization of its results.[15]

Thirdly, consideration of the sentencing method of the United States Army Courts-martial has been urged by Dr. A. Warren Stearns, former Commissioner of Correction in Massachusetts and present Dean of Tufts Medical School. United States Army sentences, which are imposed by a military tribunal convened only for the duration of the trial, have no legal validity of themselves, being in the nature of recommendations merely until they have received the approval of the military commander, designated by law for this purpose, who is called the reviewing authority. Only with such approval or confirmation do the sentences of these tribunals become operative and acquire the same sanction as the civil courts having criminal jurisdiction.[16] Dr. Stearns believes that review of superior court sentences by another justice appointed for the purpose, possibly by the Chief Justice of Massachusetts Supreme Court, would act as a check upon the tendency of judges to impose sentences based entirely upon the "hunch" method. Though it be argued that judicial courtesy would tend to make the sentences in review the same as the original, no matter how inadequate the basis for the penalty in the earlier case might have been, the plan merits thoughtful consideration and might well be discussed at one of the conferences referred to above.

A fourth proposal for improving sentencing practice is to be found in the Report of the Massachusetts Governor's Committee on Crime. In November, 1937, this Committee composed of the Commissioner of Correction, Arthur T. Lyman; the Commissioner of Public Safety, Paul Kirk; the Chairman of the Parole Board, Major Ralph W. Robart; Governor Hurley's assistant secretary, Francis McKeown, and possibly others whose names are not available—recommended the establishment of a Sentencing Board, consisting of three judges of the Superior Judicial Court. Assignment to this Board would be made by the Chief Justice of the Superior Court with rotation if deemed advisable. This Sentencing Board would determine the final sentence for each individual found guilty of a felony. The judge presiding at the trial in which a felony conviction is obtained would dispose of the case by ordering the con-

[14] Glueck, Eleanor T. and Sheldon. "500 Criminal Careers," New York, 1930.

[15] Glueck, Sheldon. "Probation and Criminal Justice," p. 121, New York, 1933.

[16] "Military Law," Encyclopedia Americana, Vol. 17, p. 103, New York, 1936.

victed individual remanded to the Department of Correction pending the determination of final sentence by the Sentencing Board. The sentence would be given within six months of the time the individual is ordered remanded. Sentence would be to whatever state institution the Sentencing Board believed had the most suitable facilities available for the individual's best interests and the protection of society. (This involves also the establishment of a Receiving Station where convicted felons would be housed until the Sentencing Board finally made disposition of their cases.) The Division of Classification in the Department of Correction would prepare a thorough, well-verified social case history on each offender, to be made available to the Sentencing Board prior to passing of sentence. The Sentencing Board would also be empowered to question any court or departmental official, or anyone connected with any particular case under consideration. The maxium statutory limits upon penalties for all felonies would be greatly extended, if not entirely removed, to give the Sentencing Board a greater opportunity to protect society and to aid the individual over a longer period of time than is now possible in many cases, such as those illustrated in the present study in the class of dangerous, habitual or professional offenders. Under the Committee's proposal also the defective delinquent law would be broadened to include the authority to commit the following types:

1. Those attackers of children who, in the opinion of the Sentencing Board, or other Superior Court Judge, have a probably incurable moral deficiency, even though not feebleminded. A careful consideration of the records of this type of individual tends to make clear that reformation is next to impossible from any knowledge of care and treatment that we now have. The statutes with reference to commitment of this type of offender, who has already been sentenced to State Prison, or the Reformatory for Men, and whose moral deficiency or perversion and likelihood of repeating attacks on children is discovered after sentence, should be modified in such a way that these individuals can be brought before the Sentencing Board for commitment, regardless of their institutional behavior. Many of these individuals are not serious *institutional* problems but will be extremely serious *community* problems and a menace to themselves as well, unless segregated for a much longer period of time than called for by their original sentence.

2. Any feebleminded, borderline feebleminded, borderline insane or markedly psychopathic criminals, either now in State Prison, State Prison Colony or Massachusetts Reformatory or yet to come, who appear to the Sentencing Board, or other superior court judge, to have a hopeless or nearly hopeless future with respect to community adjustment or who may appear to be, or have prospect of being, serious obstacles to the safe and smooth administration of these three institutions. This would eliminate the present clause in the statute which bars commitment to the Defective Delinquent Colony of any individuals convicted of offenses punishable by life; these offenses in-

cluding armed robbery and certain sex cases, as well as murder cases, among which types there are now some serious menaces to the discipline of these institutions.

Finally, a proposal for relieving the disparity in sentences in criminal cases has recently been made by the Judicial Conference composed of Federal Senior Circuit Court Justices and the Chief Justices of the District of Columbia and of the United States Supreme Court.[17] After considering the advisability of an indeterminate sentence law for the federal courts and also of conferring upon Circuit Courts of Appeal the power to increase or reduce sentences, the Conference adopted the resolution:

> "That the Conference favors the adoption of the indeterminate plan of sentence in criminal cases, along the line of the system set out in 'Draft B,' prepared in the Attorney General's Office, with the reservation that the Conference prefers a system whereby a board in each circuit or at each federal prison shall exercise the powers of a parole board."
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> The "Draft B" to which the resolution refers is in the form of a proposed bill which provides as follows:
>
> "Sec. 1. In any case in which a court of the United States imposes a sentence of imprisonment for an offense punishable by imprisonment for a term exceeding one year, such sentence shall be for the maximum term fixed by law. Within four months after any defendant commences to serve a sentence imposed as aforesaid, the Board of Indeterminate Sentence and Parole shall fix a definite term of imprisonment that the defendant shall serve. Such term shall not be more than the maximum term fixed by law in respect of the offense of which the defendant has been convicted; and if a minimum term is prescribed by law in respect to such offense, then the term fixed by said Board shall not be less than that so prescribed. In computing commutation for good conduct and in determining the date on which such defendant becomes eligible for parole, the term of imprisonment so fixed by the Board shall be deemed to be the term of imprisonment to which the defendant has been sentenced.
>
> "Sec. 2. In fixing terms of imprisonment pursuant to Section 1 of this Act, the Board of Indeterminate Sentence and Parole shall consider any recommendation made by the judge who presided at the trial; the recommendation of the United States Attorney; the report and recommendation of the probation officer; the reports and recommendations of officers of the institution at which the defendant is confined, including the warden, the medical officer, the psychologist, and the psychiatrist, and other officers whose reports the Board may deem useful; as well as any other information that the Board may deem proper. In addition, a hearing shall be accorded to the defendant before the Board or a member thereof, or before an examiner who shall report the proceedings to the Board. At such hearing the defendant shall have the privilege of being represented by counsel. Every case shall be considered by at least three members of the Board.
>
> "Sec. 3. The provisions of Sections 1 and 2 of this Act shall not apply in respect of any offense committed prior to the effective date of this Act.
>
> "Sec. 4. The name of the Board of Parole is hereby changed to Indeterminate Sentence and Parole Board. Said Board shall consist of five members to be appointed by the Attorney General at a salary of $7,500 each per annum.
>
> "Sec. 5. This Act shall apply only in the continental United States, other than the District of Columbia or Alaska.
>
> "Sec. 6. This Act may be referred to as the 'Federal Indeterminate Sentence Act'."[18]

Meanwhile, until some fundamental change in our present haphazard sentencing procedure is made, individual judges will continue to impose good and

[17] Report of the Judicial Conference, October Session, 1940. United States Department of Justice.

bad sentences. To minimize the number of the latter, the probation office staffs in superior courts should be increased in number and improved in quality so that judges may have more adequate information on which to base sentences, as well as to permit the raising of standards of supervision over probationers, which in turn helps reduce prison populations. If, as has been soundly argued, probation staffs cannot keep pace with investigation of all the complicated, serious cases, then following a finding of guilty the court should commit to a receiving station in or near Boston those offenders eligible for commitment to State Prison or Massachusetts Reformatory. There they would be held for a period of time until a complete, well-verified social case history would be completed as the basis for the judge's sentence.[19]

Appendix No. 1

List of legal offenses included under each heading of the offense classification.

Burglary

Breaking and entering to steal.
Breaking and entering and larceny in the night time.
Breaking and entering in the night time.
Breaking and entering in the night time with intent to commit larceny and larceny.
Breaking and entering.
Breaking and entering in the daytime with intent to commit larceny.
Breaking and entering in the daytime and larceny.
Attempt to break and enter in the night time.
Breaking and entering in the night time to commit larceny.
Breaking and entering in the night time with intent to commit larceny.
Possessing burglar tools.
Having burglarious implements in possession.
Having burglarious implements.

Robbery

Robbery.
Assault to rob.
Assault with intent to rob.
Robbery armed.
Robbery while armed.
Assault to rob and robbery.
Assault with a dangerous weapon to rob.
Robbery unarmed.
Accessory before the fact of assault to rob.
Robbery and putting in fear.
Robbery armed with a dangerous weapon.
Assault to rob armed with a dangerous weapon.

Sex

Unnatural act.
Sodomy.
Abuse of female child.
Assault with intent to rape.
Unnatural and lascivious act.
Assault with intent to commit rape.
Rape.
Incest.
Statutory rape.
Carnal abuse.
Assault to rape.
Carnal abuse of female child.
Assault with intent to abuse a female child.
Assault with intent to carnally abuse.

Forgery and Swindling

Larceny.
Uttering a forged instrument and larceny.

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[18] Op. cit., pp. 14-16.

[19] In this connection, consideration should be given to the suggestion made above, namely, that a law be passed permitting or requiring judges to commit to the Department of Correction rather than directly to State Prison or Mass. Reformatory.

Forgery with intent to defraud.
Uttering.
Common and notorious thief.

Felonious Assaults

Manslaughter.
Assault to murder.
Assault and battery with a dangerous weapon.
Assault with a dangerous weapon to murder.
Accessory after the fact of assault with a dangerous weapon with intent to murder.
Assault with intent to murder.
Assault and battery with a dangerous weapon with intent to murder.

Carrying Weapons

Carrying a revolver without a permit.
Carrying a revolver without authority.
Carrying a revolver in vehicle.
Carrying a revolver.
Carrying a dangerous weapon.
Unlawfully carrying a pistol.
Carrying a shotgun.
Unlawfully carrying a dangerous weapon.
Unlawfully carrying a weapon.
Unlawfully carrying a pistol on person.
Having in vehicle a dangerous weapon.
Unlawfully carrying a weapon on person.

Miscellaneous

Larceny of auto.
Receiving a stolen auto.
Receiving stolen goods.
Larceny from the person.
Operating an auto without authority.
Attempt to commit abortion.
Threatening to extort.
Verbally and maliciously threatening a person to accuse him of assault and battery with intent to extort money.
Unlawful possession of narcotic drugs with intent to sell or deliver.
Unlawfully having a narcotic drug with intent to deliver.
Wilfully and maliciously burning a building.
Unlawful possession of narcotic drugs.

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