BOOK REVIEW

A CRIMINAL JUSTICE SYSTEM AND THE INDIGENT. By Dallin H. Oaks[1] & Warren Lehman.[2] Chicago: University of Chicago Press. Pp. 203. $7.50.

In this book, authors Oaks and Lehman have compiled a detailed study and analysis of the criminal justice systems in Chicago and Cook County, Illinois. For various reasons, post conviction procedures other than appeal are not discussed. There is a wealth of observations and comments on the workings of these particular criminal justice systems, and consideration in depth of the problems of the indigent caught up in the system. The book includes a multitude of statistics, which are admittedly sometimes incomplete.

There are two general divisions to this work. The first part is comprised largely of background material containing a plethora of statistics, for which the authors apologize. The second part is not without supporting statistics, but the conclusions in this part are drawn more from observations of the methods of the systems and of the systems themselves.

The book is very difficult reading. But it should be read; and the theories should be understood by any who would impose substantial changes on the criminal justice system it describes. It should prove a valuable work for any person desiring a better understanding of criminal justice systems genenerally as well as those in Illinois. It is an education for attorneys whose practice has included little or no criminal law. It should be required reading for reformers of any criminal justice system, no matter how highly placed.

The book obviously pleads the cause of the indigent, though as discussed later, it also pleads the cause of the system, and the conclusions are sometimes surprising. The authors hope that their efforts will reveal the inadequacies of existing court records and encourage improved and more comprehensive court records. In so doing they recognize the primary purpose of these records is not to aid court observers, but they assert that improved records would result in improved court operations. Frequently the records were adequate to pose a problem, but not complete enough to permit devising a good solution.

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In one interesting analogy, the criminal justice systems in general are likened to an inverted pyramid. The screening of those enmeshed in the system takes place in diminishing levels, beginning with police interrogation and continuing through final appeal. The opinion is expressed that these levels function with varying efficiency under differing circumstances and locations. A great deal of theory is offered to isolate the various factors that may cause the differing performances, as for instance that various classes of criminal charges result in a higher proportion of guilty pleas than others. However, positive conclusions are left to the reader.

It is asserted that a more thorough investigation into the practical and financial burdens of complying with the requirement of counsel for indigent persons, both at trial and on appeal, should be undertaken. The very real danger of log-jamming judicial systems by issuing all indigents the blank check for representation that an ideal system would require is stressed. The authors believe that appointed counsel should not be required until the first stage where the accused's actions may affect the ultimate results. No case could be cited establishing a principle that counsel must be appointed to enable the accused to disentangle himself from the system at the earliest possible moment. But appointed counsel was only part of the problem. The problem of aid to the indigent for investigation, expert testimony and bail assistance is also explored. There is a preference expressed for a mixed system of appointed counsel and public defender, rather than a single public defender system. An interesting point is the comparative disadvantage of being of modest means, a situation in which a person cannot realistically afford to retain counsel who would be appointed to his defense if he were indigent. A new test of indigency is advocated, and it is observed that the only real equal justice might well be to provide all services to all accused at no cost, no matter what their state of affluence.

The probable role of police and prosecutor serving a preliminary judicial function is discussed. There is speculation that the difference in the role of discretion of the prosecutor in Cook County and Downstate Illinois may be a determining factor in the disparate number of cases in the two areas which go through full trial proceedings. And further, there is doubt that society's interest in seeing guilty persons punished is served by a prosecutor's discretion, since his desire for a good record will frequently result in his refusal to prosecute where the outcome is in doubt.

Some interesting theories are advanced concerning feedback of conviction rates to attorneys and accused persons which affects their decisions regarding guilty pleas and choice of court or jury trial. They note the chain of causation may also run the other way, *i.e.*, a greater number of guilty pleas by those realizing the strength of the case against them leaves a balance of weaker cases to be tried, and results in a decreasing conviction rate at trial. There are also observations that a drop in the conviction rate at trial may cause an increase in guilty pleas, because this would cause the prosecutor to make more attractive sentence recommendations to procure such pleas. The authors also state that the due process revolution might be having the opposite from its intended effect. That is, this revolution, by causing a drop in the conviction rate at trial, or in pretrial motions, for due process deficiencies, may have induced more attractive sentence recommendations by prosecutors, and increased acceptance of the lighter recommendations. Thus a greater conviction rate results, albeit for shorter sentences. There is the suggestion that this is perhaps for the better, altering the American Criminal Justice Systems' relatively longer sentences, when compared to some foreign systems.

Despite many cited shortcomings of the systems examined, and perhaps domestic systems generally, they are accorded a presumption of adequacy by the authors. It is asserted that a system which is responsive to social change, as the ones examined are, will establish a workable compromise between idealism and social and economic reality. In what I'm sure would be a surprise to any attorney who has had the temerity to broach the subject in a federal court, the authors place a real value on the system of negotiated pleas and sentences. With the rather surprising conclusion, considering the constant criticism one hears concerning the injustices done to the indigent, that present criminal justice systems have a good deal to commend them, the reader is cautioned to weigh changes carefully. For instance, unrepresented indigents, who, under the guise of a finding of guilty on an ordinance violation by an obliging judge in Narcotics Court, are given free medical treatment to shake the habit. On the surface, this may seem an irregular and "unjust" practice, but it does provide free medical service to some who would otherwise be unable to afford it. In the words of the authors: "Reformers who, without careful study or planned alternatives, would abolish practices that seem irregular or

even unsavory ought to be warned by examples such as this to ascertain the true social function of such practices before effecting their abolition."[3]

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3. D. OAKS & W. LEHMAN, A CRIMINAL JUSTICE SYSTEM AND THE INDIGENT 90 (1968).

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