A PRELIMINARY STUDY OF FELONY DEFENDANTS IN RURAL MISSOURI*

This study examines the handling of felony defendants in three rural Missouri counties: Miller, Putnam and Howell.[1] These counties were studied as a part of a nationwide survey of felony defendants conducted in 1963 by the American Bar Foundation (ABF).[2] Although the data for these three counties is more complete than most of the ABF Missouri data, it does have deficiencies. The lack of data as to age, schooling,

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* The Law Quarterly is indebted to the American Bar Foundation for permission to use the data upon which this study is based.

1. Part of the American Bar Foundation study (*see* notes 2-6 *infra* and accompanying text) examined eight counties in Missouri: three were urban, three "middle sized" (20,000 to 100,000), and two rural (below 20,000). As the smallest "middle size" county and because of its mainly rural character, Howell is included with the rural counties for purposes of this study.

	1960 population in 1,000's
Urban:	
Jackson County	623
City of St. Louis	750
St. Louis County	704

(Suburban St. Louis, *see* Gerard, *A Preliminary Report on the Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270-71)

"Middle Size":	
Audrain County (Mexico)	26
Jasper County (Joplin-Carthage)	79
Howell County (West Plains)	22
Rural:	
Miller County (Tuscumbia)	14
Putnam County (Unionville)	7

The groupings—urban, middle sized, and rural—are chosen for convenience only. Urban readers may say that any county under 100,000 is rural, but those from smaller places will verify that there is a difference between a county of 25,000 and one of 10,000.

Howell County is rural with some tourist industry. It is in the middle of the state on the Arkansas border. Miller county is also rural, but has a large tourist industry because the Lake-of-the-Ozarks resort area lies partly within its borders. The county is located roughly in the middle of the state. Putnam County is small and almost entirely agricultural. It lies on the Iowa border. *See* Gerard, *A Preliminary Report on the Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270, 273.

2. The survey and its results are detailed in L. SILVERSTEIN, I DEFENSE OF THE POOR, THE NATIONAL REPORT (1965) [hereinafter cited as VOL. I] and in II & III DEFENSE OF THE POOR, THE STATE REPORTS (L. Silverstein ed. 1968) [hereinafter cited as VOL. II & III]. The latter were compilations of the findings of the state reporters for the project.

An expansion of one of the Missouri reporter's findings along with a description of Missouri Law and procedure has been previously published in Gerard, *A Preliminary Report on the Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270.

Much of the data from the ABF study has not been analyzed due to the intervening death of Lee Silverstein, the project director.

economic circumstances (*i.e.*, indigency), and race[3] limits the range of empirically valid inferences which may be drawn.[4] Further, the data was collected by paid reporters.[5] At least one reporter was appointed in each state; the reporters then hired two or three assistants, usually law students. The reporters were instructed to begin their search in the court clerks' offices, and to engage in any "detective" work necessary to complete the information requested by the questionnaire.[6] The "detective" work usually entailed interviews with the county or circuit judge, prosecutor, jailer, parole authorities, and often defense attorneys. The necessity for detective work prevents the study from being as systematic as one would like, and led to many "no data" entries. The lack of available data limits analysis, and leaves planners, scholars, and local officials with many "piecemeal" impressions upon which to base decisions.[7]

Table 1 indicates the basic population, the number of felony defendants, the number of felony defendants actually studied, and the percentage of total felony defendants actually studied. The breakdown of

3. Counties did not record such information. *See* Gerard, *A Preliminary Report on the Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270, 272-73.

4. This problem was pervasive in the ABF study. Twenty-two of the fifty state reporters recommended improved record keeping. VOL. II at 13 (Ala.), 43 (Ariz.), 87 (Calif.), 174 (Ga.), 198 (Idaho), 236 (Ind.), 264 (Kan.), 280 (Ky.), 317 (Me.); VOL. III at 423 (Mo.), 447 (Neb.), 548 (N.Y.), 564 (N.C.), 607 (Ohio), 671 (S.C.), 683 (S.D.), 700 (Tenn.), 726 (Tex.), 784 (Wash.), 794 (W. Va.) 831 (Wyo.).

5. For a description of the research methods *see* VOL. I 175-79; Gerard, *A Preliminary Report on The Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270, 274 n. 4. (The weighting procedure described was not used in treating the data for this study.)

The questions on the ABF questionnaire were: (1) State. (2) County. (3) Population size of county, 1960 census. (4) Name of defendant. (5) Docket number. (6) Age. (7) Sex. (8) Race. (9) Years of school completed. (10) Date of arrest. (11) Was there a preliminary hearing? (12) Date of preliminary hearing. (13) Date of filing of indictment, information, etc. (14) Date of arraignment on indictment, information, etc. (15) Offense (s) charged. (16) Was the defendant released on bail? (17) Date released on bail. (18) Was bail changed from original amount? (19) Date bail was changed. (20) Original amount of bail set. (21) Final amount of bail set. (22) Was defendant determined to be indigent? (23) Did defendant have counsel? (24) Name of counsel, if known. (25) Date counsel first appeared or was appointed. (26) Is the case still pending? (27) Disposition. (28) Date of disposition without trial. (29) Date trial began. (30) Sentence. (31) Was defendant sentenced to fixed term? (32) Was defendant sentenced to an indeterminate term? (33) Remarks. *See* VOL. I 207-12.

6. *See* VOL. I 185. *See also* VOL. III 423.

7. The problems of data collection in the ABF project suggest that, if planning is to take place, an effort to record more complete data will be required at the local level. The lack of and disjointedness of information in Missouri has been noted by others. *See* GOVERNOR'S CITIZENS COMMITTEE ON DELINQUENCY AND CRIME, THE MISSOURI MISDEMEANANT COURT SURVEY 1967 14 (1967).

original offenses charged is shown in Table 2. The figures in these tables should not be viewed as statements of what *actually* occurred during the year studied because misdemeanors are not included and the populations and samples are small. A survey presenting a complete portrait of the criminal processes in these rural counties would require consideration of *all* criminal defendants over a longer period (at least two years). In addition, local practices should be investigated.[8] Funds were not, and are not, available for such an in-depth study. Due to the lack of data in some areas, the evaluation herein must be qualified as "preliminary". It is hoped that local officials and groups will gain something from what is presented and, at least, will know what to look for in their own future studies.

The data is important because, first, it is the only available information on rural criminal justice in Missouri and, second, it gives an idea as to the legal and law enforcement "energy" expended over the period of the survey. For example, Putnam County had a disproportionate number of D.W.I.'s (Driving While Intoxicated). A plea of guilty was typical in these cases; the defendants were sentenced to pay a fine or to go to jail. The fine was usually $100 and the jail sentence was usually ten days. This process takes little time and energy compared to the activity associated with investigation, arrest and conviction for some other felonies, *e.g.*, forgery, burglary, or assault.[9]

TABLE 1

County	Population '60 Census	Number of Felony Defendants 1962	Number of Defendants Studied	(Percentage of the Total)
Howell	21,931	95 [a]	19	(20%)
Miller	13,774	18	18	(100%)
Putnam	6,997	14	12	(86%)

[a] Taken from MISSOURI JUDICIAL CONFERENCE, CONSOLIDATED REPORT ON CRIMINAL CASES, July 1, 1962-June 15, 1963.

8. For example, are the out of state defendants handled differently in Howell and Putnam Counties because the nearness of the state line makes it easy to leave the state?

9. The classification D.W.I. as a felony for purposes of discussing bail, indigency, etc., is unrealistic since it is a malum prohibitum offense which calls upon but a part of the engine of criminal justice, *i.e.*, few prison sentences are assessed and little investigation by the state is required.

TABLE 2

County	Embezzlement	Robbery	Forgery (Bad Check)	Burglary	Assault	Stealing Over $50 [a]	D.W.I.	Rape	Manslaughter	Total
Howell	7	2	2	4	0	4	0	0	0	19
Miller	1	0	3	4 [b]	1	8	0	1	0	18
Putnam	0	0	2	2	1	0	5	1	1	12
Total	8	2	7	10	2	12	5	2	1	

[a] MO. REV. STAT. ANN. § 560.156 (Vernon 1969).
[b] These four were also charged with stealing over $50.

It might be said that a more realistic comparison could be had by multiplying the Howell County figures by five. This would give Howell County data weight equivalent to that of Miller and Putnam Counties' data (where, respectively, 100% and 86% of the defendants for 1962 were studied). However, such an extrapolation may not be justified. It is unrealistic, for example, to assume that there were no assaults, rapes, or manslaughters in a county of almost 22,000 people.[10] For this reason, the actual *randomly selected* 20% from Howell County are presented. Beyond this, only the totals for the three counties are discussed, it being assumed that the figures, taken together, represent a pattern that could be expected in any similar multi-county study of rural criminal justice processes.

Table 3 shows the amount of final bail set in each offense category and

10 Using nationwide rural area figures from a President's Crime Commission report, if Howell County is considered average, the following offenses could be expected in 1965, two years after the instant survey:

.9 homicides
2.2 robberies
2.0 rapes
12.8 assaults
66.9 burglaries
38.6 grand larcenies
11.0 motor vehicle thefts.

Adopted from THE CHALLENGE OF CRIME IN A FREE SOCIETY, A REPORT BY THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 28 (1967) [hereinafter cited as CHALLENGE OF CRIME].

the number of defendants released at each amount. The figures indicate that bail amounts correlate highly with the charge. This correlation contrasts sharply with what should correlate—likelihood of flight—which is the only theoretical justification for differing bail amounts.[11]

TABLE 3

Amounts of Final Bail	Embezzlement	Robbery	Forgery (Bad Check)	Burglary	Assault	Stealing Over $50	D.W.I.	Rape	Manslaughter	Total
$500 to	—	—	—	—	—	1 [a]	—	—	—	1
$999						(1)				(1)
$1,000 to	5	1	5	4	1	3	4	1	—	24
$2,999	(0)	(1)	(2)	(1)	(0)	(3)	(2)	(1)		(10)
$5,000 to	—	1	2	3	—	4	—	1	—	11
$9,999		(0)	(0)	(2)		(0)		(1)		(3)
Over	—	—	—	—	—	—	—	—	1	1
$10,000 [b]									(1)	(1)
No Data as to Amount of Bail or Release	3	0	0	3	1	4	1	0	0	12

[a] Numbers given in parenthesis are the number of defendants released at the given bail amount.

[b] In the counties studied no bail was set between $3,000 and $4,999.

11. One of the Missouri reporters was able to procure an urban area's list of bail amounts for various crimes—in other words a "bail sheet". As might be expected, its existence was denied by officials.

In 1951 in a Smith Act case, the U.S. Supreme Court held that the uniform setting of bail according to the offense was unconstitutional. Stack v. Boyle, 342 U.S. 1,6,9 (1951). The persistence of this custom, if not in name in practice, has been noted in every bail study since Beeley's Chicago study of 1927, A. BEELEY, THE BAIL SYSTEM IN CHICAGO (1927). *See also* collected findings in D. FREED & P. WALD, BAIL IN THE UNITED STATES: 1964 9 *et seq.* (1964) [hereinafter cited as FREED & WALD]; Wettick & McClellan, *Bail Practices in Allegheny County*, 8 DUQUESNE U.L. REV. 73, 77 (1969-70).

The effect upon a defendant's case of remaining in jail could not be explored here because of too few cases. For some observations, *see* FREED & WALD 9 *et seq.*

One of the disappointments of the ABF study is the lack of information as to indigency of the defendants. By looking at release figures alone, it is difficulty to point directly to any "preventive detention" of the poor caused by setting bail according to the offense charged. It would be naive to assume, however, that none of the people detained were indigent.[12] Were more attorney information available, it would give some indication as to indigency, at least when the attorney is appointed.

Of those defendants charged with crimes of violence,[13] *e.g.*, assault, rape, manslaughter and robbery, most were released on bond; four of the six defendants (one had no bail or release data) to these crimes were released. Defendants charged with more economically oriented crimes[14]—*e.g.*, embezzlement, forgery, burglary, and stealing—are less frequently released; nine of twenty-seven defendants to these crimes were released.[15] The implications of these findings are beyond the scope of this paper; it is apparent, however, that the immediate sanction of pre-trial detention is more frequent if crimes against property are charged than if crimes against persons are charged.[16] Note, however, that for twelve of the forty-nine cases no data was available.[17]

In Table 4, four crimes are isolated—principally because the data for them was the most complete—to determine the average detention time before trial. The first category shows the average detention time for all

12 The number of defendants with assigned attorneys for which data exists indicates the truth of this statement.

13. The "violent" and "economic" groupings are chosen for convenience. *Cf.* "The present Index of reported crime should be broken into two wholly separate parts, one for crimes of violence and the other for crimes against property." CHALLENGE OF CRIME 31.

14. *Id.*

15. A similar observation is made in FREED & WALD 55: ". . . [H]igh bail is an inadequate tool for shielding society from the recidivist."

16. The phrase "immediate sanction" is used to refer to punishment that closely follows in time the arrest but is imposed before guilt is determined. The best example is the spanking given a child by his father before the father finds out if the mother gave the child permission. How much of this idea is caught up in the current concept of "preventive detention" is unsure; a great deal it is suspected.

17 The small number of defendants made it impossible to compare release on bail with eventual disposition of the case. Thus, it was not possible to determine if being released helped the defendant avoid conviction or jail.

Studies of bail elsewhere indicate that release does help the defendant. *See, e.g.*, FREED & WALD 46 *et seq*; Gerard, *A Preliminary Report on The Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270, 315 *et seq*. (conclusions based on urban data). It should be noted that this cuts both ways since many will argue that to "loosen up" bail procedures will place more criminals on the street not only between arrest and trial but after trial as well.

defendants charged with those four crimes, whether or not released. The second category indicates the average detention time of defendants not released on bail. The embezzlement figures are the same because none of those defendants were released. The failure of forgery defendants to make bail but yet have shorter detention time is explained by the statistical inclusion of bad check cases in the forgery category.[18] An explanation may be that when presented with the evidence—the check—the defendant pleads guilty. Similar, easily procured evidence does not commonly exist for burglary, embezzlement, or stealing. These delays occur before any sentence is assessed and, usually, before any determination of guilt is made. It is recognized that many times defendants may themselves cause the delay for tactical purposes—*e.g.*, hope that a witness will become unavailable—however, in view of the harmful effects of detention, imposing it on a defendant should be seen as a serious matter.[19]

TABLE 4

	Burglary	Embezzlement	Forgery (Bad Check)	Stealing Over $50
Average number of days in jail before defendant released or sentenced (all defendants)	19	90	55	24
Average number of days in jail before disposition for those *not released* on bail	32	90	25	43

18. Professor Gerard was told, when interviewing rural prosecutors, that much of their time is devoted to bad check cases. The typical disposition of these cases, according to the interviews, was to let the defendant plead guilty and pay a fine if the check was made good. It was implied that many of the defendants who paid the check and the fine had no lawyer because they did not want to pay the fine *and* the lawyer.

The figures in Table 8 do not reveal this practice since no fines were assessed. It may be that the complaint is torn up if the check is paid and, therefore, would not appear in the sample. *See* Gerard, *A Preliminary Report on The Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270, 288.

19. For comments on the effects of detention for any period of time, *see, e.g.*, FREED & WALD 9 *et seq.* (describing the adverse effect on defendant's job, family, mental health, etc.); Rankin, *Effects of Pretrial Detention*, 39 N.Y.U.L. REV. 641 (1967).

Table 5 indicates the number of defendants charged with each crime who waived their preliminary hearing. The importance of the preliminary hearing has been discussed elsewhere.[20] The reasons for waiver are legion: knowledge of guilt, unwillingness to take the stand to submit to cross-examination, etc.

TABLE 5

	Embezzlement	Robbery	Forgery (Bad Check)	Burglary	Assault	Stealing Over $50	D.W.I.	Rape	Manslaughter	Total
Number of Defendants That Waived Preliminary Hearing	5 of 7	1 of 2	6 of 7	6 of 10	1 of 2	8 of 10	5 of 5	1 of 2	1 of 1	34 of 46
Number with No Preliminary Hearing Data	1	0	0	0	0	1	0	0	0	2

Tables 6 and 7 contain available information about the type of attorney representation for each defendant. Lack of data for almost 20% of the defendants limits the conclusions which may be drawn; nevertheless, it is interesting that the number of forgery defendants with assigned counsel (three) or no counsel (one) (see Table 6) is high compared to the number of forgery defendants with retained counsel (one).

Tables 7 and 8 give the disposition of the cases as compared with type of attorney and original offense charged. All no data cases are omitted in Table 7. Excluding the number *nolle prossed*, the results obtained by defendants who lacked counsel is not surprising. Most startling is the record of assigned attorneys. Only one defendant of six with assigned counsel was placed on probation as against seven of the thirteen who had retained an attorney. Of six with retained counsel who pleaded guilty to the principal charge, four were placed on probation as against only one

20. *See* Gerard, *A Preliminary Report on The Defense of Indigents in Missouri*, 1964 WASH. U. L. Q. 270, 286. No grand jury indictments were sought in the three counties studied.

TABLE 6

Type of Attorney	Embezzlement	Robbery	Forgery (Bad Check)	Burglary	Assault	Stealing Over $50	D.W.I.	Rape	Manslaughter	Total
Retained	0	1	1	2	1	6	3	2	1	17
Assigned	0	0	3	1	0	1	0	0	0	5
No Attorney	1	0	1	1	0	1	2	0	0	6
No Data as to Type of Attorney	5	1	2	6	1	4	0	0	0	19

TABLE 7

	Retained	Assigned	No Attorney	Total
Probation	7	1	0	8
Prison	3	4	2	9
Nolle Pros.	3	1	3	7
Total	13	6	5	

	Retained	Assigned	No Attorney	Total
Plea of Guilty to Principal Offense *Charged*				
Prison	2	5	2	9
Probation	4	1	0	5
Plea of Guilty to a Lesser *Offense*				
Prison	1	0	0	1
Probation	2	0	0	2

for a similar total of six with assigned counsel. Further, no defendant with assigned counsel had his charged reduced while three defendants with retained counsel did so. The small number of cases precludes the isolation of factors proving the proposition; yet, the comparisons taken together seem to justify an inference that assigned counsel did not put forth effort equivalent to that received by persons retaining counsel.[21] At least, assignedcounsel did not achieve results as favorable to the defendants as were obtained by retained counsel. Clearly, these conclusions merit additional testing.

TABLE 8

Sentence	Embezzlement	Robbery	Forgery (Bad Check)	Burglary	Assault	Stealing Over $50	D.W.I.	Rape	Manslaughter	Total
Probation	1	1	2	2	1	3	0	1	0	11
Prison	3	0	3	4	0	2	1	1	1	15
Nolle Pros.	4	1	1	1	0	4	0	0	0	11
Other (Includes No Data Cases)	0	0	1	3	1	3 [a]	4 [b]	0	0	12
Total	8	2	7	10	2	12	5	2	1	

[a] One defendant found not guilty by jury.
[b] All fined.

21 Professor Gerard found that, when interviewed in person or by mail, Missouri judges and prosecutors felt that retained and assigned counsels compared equally in experience and ability. Gerard, *A Preliminary Report on The Defense of Indigents in Missouri*, 1964 WASH. U.L.Q. 270, 317 implies that the question should have been put in terms of effectiveness rather than experience and ability. His Table 17 (*Id.* at 319), and Table 7 (text *supra*), support this implication.

Also, based upon personal observation, Gerard notes that assigned attorneys rarely ask for probation. Gerard, *A Preliminary Report on The Defense of Indigents in Missouri*, 1964 WASH. U L Q. 270, 320-21. Table 7 (text *supra*) shows that, in rural-Missouri-area samples, assigned-attorney clients were rarely placed on probation, whether or not probation was requested.

In contrast, an attorney in rural Kentucky stated that he always asks for probation in his assigned cases and has yet to have it refused for first offenders. (Interview with W.S. Greenwell, Marion, Kentucky.)

To summarize, it appears that the quality of justice obtained in rural areas falls far short of the ideal. Specifically, bail is set in correlation with the crime charged or, at least, not demonstrably in correlation with the likelihood of flight. This seems to result in more defendants charged with "economic crimes" having to remain in jail, probably because they have less money. Further, the performance of the bar leaves much to be desired. Even though the same lawyers handled both assigned and retained cases, they achieved noticeably different results.[22] Finally, record keeping is so inadequate that it is almost impossible to discover the source of the problems that seem to exist.

T. Rankin Terry
Special Student Contributor

22. The number of names of attorneys which appeared on ABF questionnaires, as both assigned and retained counsel, is small because the information was often not available. Nevertheless there were enough to substantiate the statement in the text.