Reviews

DETENTION BEFORE TRIAL

(A Study of Criminal Cases Tried in the Toronto Magistrates' Courts)

By MARTIN L. FRIEDLAND. Toronto: University of Toronto Press, 1965, pp., 202. $9.25.

The deleterious effects of pre-trial custody in the administration of criminal justice has been admirably set forth in this study. While the work has confined itself to Criminal Code offences concluded in Toronto Magistrates' Courts between the six month period from September, 1961 to February, 1962, the conditions and practices in those courts must, in the absence of comparable studies in other centres, be assumed as typical.

The findings of the study in regard to the excessive use of arrest procedure as distinct from a summons procedure and, the valuable comparison between Toronto and English practice in this area will produce in the reader a great sense of disquiet. When we are told that in indictable offences in England in 1961 the summons was employed over four times as often as it was in Toronto in that year, it is reasonable to ask why this discrepancy should exist. Generally, the explanations found and reported upon in the study do not offer any satisfactory explanation save that of police convenience and judicial apathy.

Bail procedures described by the study reveal a situation which leaves the availability of this ancient right of the subject to the machinations of a venial group of professional bondsmen and a pitiful handful of jaded judicial officers.

While the whole subject of legal aid in Ontario is presently receiving proper attention the reader of the study will see that the attention is long overdue. Professor Friedland's findings and comments will no doubt be influential in the form which any Ontario Legal Aid Program takes. It is to be hoped that they will also serve to stimulate action along similar lines in the other provinces.

The inadequacies of Canadian Criminal Statistics and more particularly, the statistical record of the activities of the Toronto Police makes the detailed control of police practices by independent persons particularly difficult. The study makes plain that adequate statistical information is the *sine qua non* of control over police activities. That the police are unduly sensitive to criticism is well known. If this sensitivity to criticism is the result of their feeling of isolation from the rest of the community perhaps, the non-availability of information concerning police activities is a major factor contributing to this sense of isolation.

Where magistrates are made aware through a pre-sentence report, that the accused has, subsequent to his plea of guilty, denied guilt or indicated possible defences to the charge, and they do not move to try the matter of guilt or innocence, but instead impose a penalty, fundamental principles of our criminal law are being ignored. The study indicates that such practices do occur in Toronto Magistrates' Courts.

The effect of custody on the ultimate disposition of the accused's case receives as the title of the study suggests, extensive consideration. Professor Friedland concludes that on the basis of the statistical evidence custody prejudices the disposition of an accused's case by making it difficult for him to present an adequate defence and, increasing the probability of a sentence of imprisonment if found guilty.

On the basis of the study it is difficult not to conclude that custody as an inducement to plead guilty is a device much relied upon by the police to avoid the time-consuming business of a trial. An assumed lack of police resources is probably the only justification that can be offered for the procedure. This justification will, however, be reduced in direct proportion to the uneconomic use of present police resources. The study suggests areas of police activity where scarce resources are uneconomically employed because of inadequate legislative direction and, lack of police flexibility.

It is unfortunate that the research method used in the study was that of a census of a population and not a random sampling. The choice of the more cumbersome technique will inevitably discourage the duplication of the study in other urban areas where the additional resources required by a census technique are not readily available. An opportunity to demonstrate a valuable research device of the social sciences to the legal profession should not have been lost. There is also an obligation upon the researcher, to use the best available research methods uninfluenced by preconceptions of a particular audience's bias. That these things have not been done however, cannot detract from the significant contribution that this study has made to the solution of the problems of administering criminal justice in Canada.

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