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Felony Trials in Michigan Counties

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FELONY TRIALS IN MICHIGAN COUNTIES

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In 1927 the Legislature of the State of Michigan revised its criminal code, permitting, among other changes, an option, in the discretion of the defendant, of trial by jury or by the Court without a jury. Incidentally this permissive provision is one plank of the so-called "criminal code reform movement" which gave birth, in Michigan and elsewhere, to curious progeny, such as are embodied in the Baumes Laws (of increased penalties for repeaters) and the like.

Data relative to the employment, proportionate selection of jury and juryless trials, comparative sentences and time consumed, in the specific instance of the Recorder's Court of Detroit, Michigan, have been published in an abstract[1] and in a more comprehensive article.[2] Oppenheim,[3] in an excellent exposition of the legal precedents and authority for the provision, propounds the thesis that right of Jury trial may not be denied a defendant yet, similar to the waiving of an examination, is also inherent, not to the State, but to the safeguards of personal liberties. He further points out the loosely used, oft-quoted constitutional guarantee of "right of trial by a jury of peers" to the contrary notwithstanding, that permissive waiver may legally be provided either by constitutional amendment or judicial interpretation. In the former instance the United States Supreme Court ruling[4] and the decision of the Illinois State Supreme Court (as the result of a test case)[5] lend authoritative opinion to these views. All of which is of greatest import to those interested in equitable administration of justice and most certainly to the advocates of speedy justice.

The present discussion is an extension of the Recorder's Court study and concerns itself with the usage of the optional method of trial in several rural Michigan jurisdictions. Collaterally, the question had been raised of the use of the plea of guilty as a mode of

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[1]"Waiver of Jury in Felony Trials," *Michigan Law Review* XXVIII, No. 2, 163-178, December, 1929.

[2]"Optional Waiver of Jury in Felony Trials in the Recorder's Court, Detroit, Michigan," *Journal of Criminal Law and Criminology,* XXI, No. 1, 41-121, May, 1930.

[3]S. C. Oppenheim: "Waiver of Jury Trial in Criminal Cases," *Michigan Law Review,* XXV, No. 7, 695-739, May, 1927.

[4]*Patton et al* v. *United States, Supreme Court Reports,* Vol. 50: 253.

[5]*People* v. *Harry M. Fisher,* 340 Ill. Sup. Ct. Repts., 250.

culmination of cases, in contrast to and compared with trial by both jury and the Court. An exhaustive study of data relative to all the county criminal courts was beyond immediate scope. The discussion is therefore limited to information personally collected in seven counties within a radius of one hundred miles of Detroit but substantiated by answers contained in replies to a questionnaire sent to clerks in some twenty counties. The letter asked specific information as to the employment of waiver of jury trial in the period subsequent to the passage of the law. In the former instance information was derived from the dispositions and method of disposition as contained in the criminal calendars of the county courts.

An exposition of the method of tabulation and collection of the data followed closely upon that employed in the Recorder's Court study.[6] Suffice it to say that here too the number of cases indicated later comprise the number of "individuals charged with the commission of a felony by the issuance of a felony warrant and complaint" and not the number of "complaints issued."

A. Data Personally Collected

CRIMINAL TRIALS IN MICHIGAN COUNTIES

TABLE NO. 1

NUMERICAL DISTRIBUTION OF CASES

Year Cases Docketed	County	Pending	Dismissed	Nolle Pross.	Jury Cases Plea Guilty	Jury Cases Not Guilty	Waiver Cases Plea Guilty	Waiver Cases Not Guilty	Total
1927	Genesee	25	5	153	842	47	8	1	0	1081
	Saginaw	1	15	84	195	5	5	0	0	305
	Livingston	12	0	4	54	4	1	0	0	75
	Monroe	11	5	19	135	19	5	0	0	195
	Macomb	1	0	17	101	9	6	0	0	134
	Washtenaw	23	2	17	154	8	4	0	0	208
	Oakland	30	7	18	424	40	6	1	0	526
1928	Genesee	16	15	129	741	36	13	2	0	952
	Saginaw	3	1	71	223	11	3	0	0	312
	Livingston	11	3	1	42	0	1	0	0	58
	Monroe	11	10	38	116	13	4	5	1	198
	Macomb	8	1	23	109	11	4	2	0	158
	Washtenaw	19	0	5	190	5	5	0	0	224
	Oakland	50	10	32	377	26	9	4	1	509
1929	Genesee	37	20	135	651	47	9	6	0	905
	Saginaw	18	7	49	192	15	2	0	0	283
	Livingston	9	3	1	26	0	0	0	0	39
	Monroe	14	7	16	99	7	7	9	0	159
	Macomb	18	12	20	154	18	4	2	0	228
	Washtenaw	28	2	6	305	6	0	1	0	348
	Oakland	82	8	42	413	67	21	1	0	634

[6] *Journal of Criminal Law and Criminology*, XXI, No. 1, 49-51, May, 1930.

Here we find listed the number of individuals charged with felonies during the given years and the distribution of these complaints into recognized categories. The reliability of the figures may be assumed for all counties with the possible exception of Livingston which had but a small annual output. The year 1927 naturally shows but a few trials by waiver of jury inasmuch as the law became operative in September, 1927. All of these counties have sizable towns and villages within their corporate limits, especially Genesee and Oakland. The former has Flint and the latter Pontiac, both of them automobile boom towns in the throes of expansion.

CRIMINAL TRIALS IN MICHIGAN COUNTIES

TABLE NO. 2

PERCENTAGE DISTRIBUTION OF DISPOSITIONS OF ALL CASES

Year Cases Docketed	County	Pending	Dismissed	Nolle Pross.	Plea Guilty	Jury Cases Guilty	Jury Cases Not Guilty	Waiver Cases Guilty	Waiver Cases Not Guilty
1927	Genesee	2.3	.5	14.2	77.9	4.3	.7	.1	0
	Saginaw	.3	4.9	27.5	63.9	1.7	1.7	0	0
	Livingston	16.0	0	5.3	72.0	5.3	1.4	0	0
	Monroe	5.6	2.6	9.8	69.6	9.8	2.6	0	0
	Macomb	.8	0	12.7	75.3	6.7	4.5	0	0
	Washtenaw	11.1	1.0	8.2	74.0	3.8	1.9	0	0
	Oakland	5.7	1.3	3.5	80.6	7.6	1.1	.2	0
	AVERAGE	6.0	1.5	11.6	73.3	5.6	2.0	*	0
1928	Genesee	1.7	1.6	13.5	77.8	3.8	1.4	.2	0
	Saginaw	.9	.3	22.8	71.5	3.6	.9	0	0
	Livingston	19.0	5.2	1.7	72.4	0	1.7	0	0
	Monroe	5.5	5.1	19.2	58.6	6.6	2.0	2.5	.5
	Macomb	5.0	.6	14.6	69.0	7.0	2.5	1.3	0
	Washtenaw	8.5	0	2.2	84.9	2.2	2.2	0	0
	Oakland	9.8	2.0	6.3	74.0	5.1	1.8	.8	.2
	AVERAGE	7.2	2.1	11.5	72.6	4.0	1.8	.7	.1
1929	Genesee	4.1	2.2	14.9	72.0	5.2	1.0	..6	0
	Saginaw	6.4	2.4	17.3	67.9	5.3	.7	0	0
	Livingston	23.1	7.7	2.6	66.6	0	0	0	0
	Monroe	8.8	4.4	10.1	62.2	4.4	4.4	5.7	0
	Macomb	7.9	5.3	8.8	67.5	7.9	1.8	.8	0
	Washtenaw	8.1	.6	1.7	87.6	1.7	0	.3	0
	Oakland	12.9	1.4	6.6	65.1	10.6	3.3	.1	0
	AVERAGE	10.2	3.4	8.8	69.9	5.0	1.6	1.1	0
1927—1928	Recorder's Court Study	21.8	25.4	6.6	27.6	6.6	4.6	4.3	3.1

*Less than .1%

Immediately above are shown the percentage relationships of all dispositions of cases. This indicates the fairly general conformity, for all counties studied, to the trend of approximately seven-tenths

or more of all dispositions by plea of guilty, five to seven per cent by jury trial, one per cent or less by juryless (or waiver of jury trial), and one-fifth by pre-trial conclusions. The general differences between this distribution and that of a typical urban court are revealed by an inspection and comparison of the above data with those of the Recorder's Court for the first year of operation of waiver of jury trial. In the latter instance, pre-trial dispositions account for at least fifty-three per cent or more than half of all cases initiated, pleas of guilty for one-fourth, and actual trials—by either jury or Court—for slightly less than one-fifth.

CRIMINAL TRIALS IN MICHIGAN COUNTIES

TABLE NO. 3

COMPARISON OF DEVIATIONS IN PERCENTAGE OF DISPOSITIONS OF ALL CASES[a]

Year Cases Docketed	Source of Data	Pending	Dismissed	Nolle Pross.	Plea of Guilty	Jury Cases Guilty	Jury Cases Not Guilty	Waiver Cases Guilty	Waiver Cases Not Guilty
1927	Average, all Counties	6.0	1.5	11.6	73.3	5.6	2.0	*	0
	Recorder's Court Study	21.8	25.4	6.6	27.6	6.6	4.6	4.3	3.1
	Difference	15.2	23.9	—5.0	—45.7	1.0	2.6	4.3	3.1
1928	Average all Counties	7.2	2.1	11.5	72.6	4.0	1.8	.7	.1
	Recorder's Court Study	21.8	25.4	6.6	27.6	6.6	4.6	4.3	3.1
	Difference	14.6	23.3	—4.9	—45.0	2.6	3.8	3.6	3.0
1929	Average all Counties	10.2	3.4	8.8	69.9	5.0	1.6	1.1	0
	Recorder's Court Study	21.8	25.4	6.6	27.6	6.6	4.6	4.3	3.1
	Difference	11.6	22.0	—2.2	—42.3	1.1	3.0	3.2	3.1

[a]Absence of a sign indicates a gain for Recorder's Court, minus (—) sign a loss.

*Less than .1%

These differences are more clearly pointed out in the above table where the specific variations between the average for all counties and the Recorder's Court study are shown. As will be seen, the urban court has a greater number of all types of dispositions of criminal cases except those of "Nolle Prosse" and "Pleas of Guilty." This may be interpreted as an evil inherent in mass alone, that the larger the court and the greater the volume of business, the more likelihood of disarticulated processes in the various steps of judicial admin-

istration. Again, it is noted that the county courts dispose of approximately three times the number of cases by pleas of guilty.

CRIMINAL TRIALS IN MICHIGAN COUNTIES

TABLE NO. 4

PERCENTAGE DISTRIBUTION OF JUDGMENTS

Year Cases Docketed	County	Plea of Guilty	Jury Cases		Waiver of Jury		Total Number of Cases
			Guilty	Not Guilty	Guilty	Not Guilty	
1927	Genesee	93.8	5.2	.9	.1	0	898
	Saginaw	95.2	2.4	2.4	0	0	205
	Livingston	91.5	6.8	1.7	0	0	59
	Macomb	87.1	7.7	5.2	0	0	116
	Washtenaw	92.8	4.8	2.4	0	0	166
	Monroe	84.9	12.0	3.1	0	0	159
	Oakland	90.0	8.5	1.2	.1	0	471
	AVERAGE	90.8	6.8	2.4	*	0	
1928	Genesee	93.6	4.5	1.6	.2	0	792
	Saginaw	94.1	4.7	1.2	0	0	237
	Livingston	97.7	0	2.3	0	0	43
	Macomb	86.5	8.7	3.2	1.6	0	126
	Washtenaw	95.0	2.5	2.5	0	0	200
	Monroe	83.5	9.3	2.9	3.6	.7	139
	Oakland	90.4	6.2	2.2	1.0	.2	417
	AVERAGE	91.6	5.1	2.3	.9	.1	
1929	Genesee	91.3	6.6	1.3	.8	0	713
	Saginaw	92.0	7.1	.9	0	0	209
	Livingston	100.0	0	0	0	0	26
	Macomb	86.5	10.2	2.2	1.1	0	178
	Washtenaw	97.8	1.9	0	.3	0	312
	Monroe	81.2	5.7	5.7	7.4	0	122
	Oakland	82.3	13.3	4.2	.2	0	502
	AVERAGE	90.2	6.4	2.0	1.4	0	
1927—1928	Detroit Recorder's Court Study	59.7	9.4	6.6	14.4	9.9	3934

*Less than .1%.

Considering judgments alone (where the stage of trial is reached in the progress of a case through the legal ramifications of complaint, warrant, arraignment on warrant, examination, arraignment on information) it develops, in the main, that county courts conclude a major portion of their business by acknowledgment of guilt. This amounts to ninety per cent or more of all judgments, with but little use of either jury or waiver of jury trial. Outstanding here are the facts of relative insignificance of the plea in the urban court (when

compared with the percentage in the counties) and the same insignificance of trial in county courts.

CRIMINAL TRIALS IN MICHIGAN COUNTIES

TABLE NO. 5

COMPARISON OF DEVIATIONS IN PERCENTAGE DISTRIBUTION OF JUDGMENTS[a]

Year Cases Docketed	Source of Data	Pleas of Guilty	Jury Cases Guilty	Jury Cases Not Guilty	Waiver Cases Guilty	Waiver Cases Not Guilty
1927	Average all counties	90.8	6.8	2.4	*	0
	Recorder's Court (1927-1928)	59.7	9.4	6.6	14.4	9.9
	Difference	—31.1	2.6	4.2	14.4	9.9
1928	Average all counties	91.6	5.1	2.3	.9	.1
	Recorder's Court (1927-1928)	59.7	9.4	6.6	14.4	9.9
	Difference	—31.9	4.3	4.3	13.5	9.8
1929	Average all counties	90.2	6.4	2.0	1.4	0
	Recorder's Court (1927-1928)	59.7	9.4	6.6	14.4	9.9
	Difference	—30.5	3.0	4.6	13.0	9.9

[a]Absence of a sign indicates a gain and a minus (—) sign indicates a loss for the Recorder's Court.
*Less than .1%.

The peculiarities noted above are more strikingly borne out by the comparisons made in this summarization and they indicate the same trends. Explanations of these phenomena are presented later.

B. LETTERS FROM COUNTY CLERKS

Early in 1930 form letters were sent to some twenty County Clerks and to the Clerk of the Superior Court of Grand Rapids (which, although a city court, has felony jurisdiction within its limits). These letters requested information as to the extent of the employment of waiver of jury trial and also copies of the annual reports for the several years preceding and following 1927.

Answers were had from fourteen County Clerks and one Superior Court Clerk. These replies, either by the Clerk or the Prosecuting Attorney, uniformly relate that little if any use has been made of the optional provision of trial. Specifically these letters state: "We have had only one such waiver" (Baldwin County). "I do not believe that there have been over five such waiver of jury trials in criminal cases in this court in 1929" (Oakland County. Table No. 1

shows but one juryless trial in this county in 1929). "My experience has been that ninety per cent of our criminals plead (sic) guilty, therefore a waiver of jury is seldom called for" (Huron County). "There were only about ten cases in the past two years that waived a jury" (Superior Court of Grand Rapids).

The others refer all inquiries to the annual report of the Prosecuting Attorney to the Attorney General of the State of Michigan. Through the courtesy of Mr. Charles Rubiner, Assistant Attorney General, a blank form of this report was made available. This form lumps all convictions, irrespective of method of finding (plea of guilty, jury, or waiver trial). Hence, the only method of exact determination of the trend in disposition of cases was that followed for the seven counties, namely, personal examination. The letters indicate, it is believed, a representative situation in county courts: a preponderance of pleas of guilty, a small number of jury trials, and very few, if any, trials without jury. Professor Raymond Moley comments upon the same tendency: "It appears that the plea of guilty is much more frequent than the verdict of guilty in both city and county."[7]

Still seeking official enlightenment upon the preponderance of pleas of guilty and the possible elimination of doubtful cases between arraignment on warrant before a justice of the peace and arraignment on information in the Circuit Court, letters were addressed to the Honorable George W. Sample and Mr. Carl H. Stuhrberg, Circuit Judge and Prosecuting Attorney respectively of Wastenaw County. Both were considerate enough to reply at length. Mr. Stuhrberg, on January 30, 1930, replied as follows:

"You will note (in the semi-annual reports to the Attorney General) that practically all felony cases brought into the Justice's Court are determined in the Circuit Court and we make it a practice of charging each persons with the crime he has committed and of carrying him through on this basis. We even charge individuals with having one-half pint of liquor in their possession under the prohibition law.

There are numerous elements entering into this, one being that as soon as a person is arrested, my office is notified and we at once take the case up with the accused and in the majority of cases take him immediately into Justice Court and Circuit Court, eliminating delays. I find that if the accused is permitted to be incarcerated in the county jail while awaiting trial for any length of time, and, in many cases, a short time, that the possibility of obtaining a plea of guilty is very remote.

We endeavor to be absolutely fair . . . with the accused, explaining to him fully the charge and the punishment which might be

[7]"Politics and Criminal Prosecution," 161-2.

meted out to him, procuring his confidence and, in carrying the case through the Court, in no way betraying the same. . . .

Another element entering into this is a hundred per cent cooperation between police officers, the justice courts, the Circuit Court, and this office . . . who absolutely desist from public criticism of one another. . . . If we have any differences in opinions, they are ironed out in private conferences. . . .

In some particular cases, we find that just plain incarceration in the county jail has a very good effect in procuring pleas of guilty. . . . We believe in fixing high bail bonds. . . . It is my observation that admitting accused persons to bail is extremely detrimental to the expeditious disposition of the case and is effective in permitting the Respondent to obtain delay. It is my personal opinion that as soon as an accused is admitted to bail, his chances of conviction, even by trial, is made about one-half easier than as though he were kept incarcerated . . . ."

The Judge of the same Circuit Court replied, on March 17, 1930:

"I haven't the trouble that some localities have with jurors going wrong on questions of guilt of those who commit felonies. I live up to my oath in the administration of my office and I have it distinctly understood that I will sit with no jury which does not live up to its oath and I wouldn't hesitate a minute to discharge a jury or jurors in case I were sure they had wrongfully or otherwise discharged a person where the evidence showed he was guilty beyond a reasonable doubt—but with this sort of method, with a jury doing its full duty in every case, the temptation of a felon is to plead guilty and place himself at the mercy of the Court. It is always an implied understanding that the Court will show a measure of leniency where the party enters into a plea of guilty, instead of contesting the case.

There is no tendency on part of the Justices of the Peace, nor the Prosecutor to dismiss doubtful cases . . . and where the party knows himself to be guilty, but the testimony would not convict, we also extend a lenient hand.

The court insists on complete cooperation between the prosecuting officers, the arresting officers, and the Circuit Court . . . ."

Discussion

All of which brings one to the points in question: (1) If the plea of guilty is so predominant in County Court disposition of cases (and therefore the percentage of convictions, in relation to the total number of individuals complained against, is very high), what are the underlying reasons? (2) What factors, if any, make for the inconsequential use of the optional waiver of jury trial as a mode of disposition? and (3) are these facts peculiar to the criminal courts of counties and if so, why?

As indicated by both letters quoted above, one of the main considerations in County Circuit Courts (in criminal charges) seems to

be the item of saving in time and expense of trials. By the use of the plea of guilty, the concomitant burdens of selection of a jury, paying them, the extra time consumed by the prosecuting witnesses and officers, etc., are obviated. In return for the consideration by the accused of the County's exchequer he is shown leniency in the sentence meted out to him. This statement, in addition to the direct corroboration, was informally mentioned by a number of County Clerks and its relevancy may be assumed with little hesitation.

The critical reader might question the possibility of infringement upon individual liberty and the legal prerogatives of the accused. He might further raise the hue and cry that the prisoners at the bar, in the several counties, were being "railroaded" into prison. And all this from the very preponderance of pleas of guilty, and the assumption, from the above data, that accusation in a county court, is equivalent to conviction. In partial refutation stand the data presented in Table 2 wherein approximately twenty per cent of all cases do not reach any stage beyond that of arraignment on information or Prosecutor's Warrant. Nothing is offered to confirm or deny the charge with respect to the seventy or more per cent pleading guilty. It would require personal acquaintance of long standing with the administration of justice in individual instances to support the allegations or deny them. It is nevertheless evident that the plea of guilty is an institution of long standing and wide-spread usage in the several counties and perhaps the entire State.

A simple arithmetical process having disposed of the bulk of judicial grist by plea and a substantial number by pre-trial (and non-conviction) modes, little remains for disposition by either jury or waiver of jury trial. In most counties there is but one Judge sitting on the Circuit bench and the volume of business, in criminal cases, transacted is insufficient to occupy his entire attention. A plea of guilty, it is contended, is in essentials the equivalent of an informal trial before the Court without a jury. For it is obvious that, if the Judge is to sentence with wisdom, he inquire into the facts underlying the evidence. Should there be any doubt raised as to the guilt of the accused, it becomes likely that the Judge will initiate the proper steps, either of acquittal or reduction of the charge.

Combined with the next query—whether the situation is peculiar to county jurisdictions (as contrasted with urban courts)—may be summarized the extra-legal agencies which have sprung up as the direct result of popular government. In the larger centers of population, it is incumbent on most of the judiciary of original jurisdictions,

in seeking election or re-election, to engage in campaigns of ballyhoo, speeches, banners, cards, rallies, mass meetings and hosts of workers. It would be ridiculous to mention the supposed altruistic interest of the average citizen in the officials governing him, not to speak of the judiciary. In most instances popular pride makes the citizen most secure when he shuns acquaintance with officialdom. Hence, in seeking office, reliance must be had upon such members of the voting public as will contribute campaign funds and put forth personal efforts. In return for these services, it is not unlikely that considerations of one sort and another are expected. The contention is made, in contrast, that no such campaign devolves upon the County Judges. And, ipso facto, no considerations sought or granted.

All this springs from the organization, the mass production elements involved in the government of large bodies of people. The remedy, if there is any, consists of both an enlightened electorate interested in its judiciary and the administrative machinery of justice and the calibre of men selected for office. The evil, sad to relate, is an inherent one. Neither or either of these perhaps idealistic situations is prevalent with uniformity in metropolitan administration.

Concurrent with the necessity of a sizeable bench personnel is the element of jockeying of cases. Various expedients are employed, in urban courts, to postpone the trial of a case, from judge to judge, until one is reached upon whom attorneys and clients may depend for sympathy toward a particular charge. As pointed out elsewhere (see note 2) trial by a judge (without jury) indicates the greater probability of conviction but more lenient sentence than if the issue were tried by a jury before the identical judge. In county courts this is impossible because there is but one member of the bench and further as a result of the implication that a plea of guilty usually means a lighter sentence than that following conviction after trial.

It is observed that, in county court trials of felonies, accusation is most usually followed by conviction, mostly through the expedient of a plea of guilty. The sentence imposed, in the latter instance, by implication, is more lenient than that following the expense of trial by either jury or Judge; that with but one judge available for trial of criminal accusations, a plea of guilty is partially the equivalent of a juryless trial; that trials, by either permissive method, are few and far between; and finally that the optional provision of trial by the Court, at the election of the accused (under the 1927 Criminal Code of the State of Michigan) has, as yet, not been put to general use in Michigan Circuit Courts.