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Lesser Pleas Considered

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LESSER PLEAS CONSIDERED

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I

Political scientists, reformers, and politicians out of power "view with alarm" the practice of the acceptance of pleas of guilty to a lesser charge than the original or to the least count in a series included in any one indictment. This practice by local Prosecuting Attorneys constitutes the current method of securing the majority of convictions. Unfriendly critics have termed the procedure "bargain day in the District Attorney's office."

In response to this criticism, the New York State Legislature attempted in 1936 to curtail the discretionary powers of the District Attorney. Since that date, whenever a District Attorney accepts a plea of guilty to a crime of a lesser degree, the law requires that he shall submit to the Court a statement in writing of his reasons for recommending the acceptance of the particular plea. This statement, filed by the court with the other papers in the case, is open to the public for inspection.[3] At the time it was generally believed that Prosecuting Attorneys who are forced to make their reasons explicit when accepting reduced pleas would be somewhat circumspect in these recommendations.

In order that the validity of this assumption might be tested, an analysis of the reasons listed in the reports of prosecutors as justification for the acceptance of lesser pleas seemed worth undertaking. Since records of the District Attorney's office in New York County were available, it was determined that this study be based on an analysis of the reasons filed there in compliance with the law. In addition, other factors motivated the selection of this office. Mr. Thomas E. Dewey had begun his term in 1938 as a reform administrator; therefore ties which might have been responsible for some "bargain day" agreements between a "dominant party machine" and a "crime trust" presumably did not exist.

Then, too, in the year ending in June, 1939, an increase of 4.8 per cent in the number of lesser pleas had occurred for New York County, an addition of 119 cases.[4] Since this increase took place in a reform administration it seemed worth investigating. Several of the Assistant District Attorneys, moreover, were in-

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[3] Code of Crim. Proc., Sec. 342a.

[4] Citizens' Committee on the Control of Crime in New York City. *Crime in New York City in 1939.* Citizens' Committee Publication, New York 1940. In four counties of New York City for the year July 1, 1939 to June 30, 1940, "Pleas of guilty to lesser offenses than those charged in the indictment rose to 80 percent of all pleas and accounted for 72 percent of all convictions." Citizens Committee on the Control of Crime in New York City. *Crime in New York City in 1940.* Citizens' Committee Publication, New York 1941, p. 8.

TABLE I

Second, Third and Fourth Offender Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	*Cases*[c] *Total*	*Reasons for Reduction of Indictments*[b] *Small Amount*	*Sufficient Punishment*	*Weak Cases*	*Restitution*	*Full Confession*	*No Property Taken*	*Realt Gun*	*Defendant Drunk*	*Plea Accepted Covers Two Indictments*	*Other*[d] *Reasons*
All Reductions	241	55	53	51	21	16	16	14	10	8	24
Robbery 1° to											
Robbery 2°	4	2	..	1	..	..	..	1	..	1	..
Robbery 3°	16	3	4	2	1	2	..	11	..	..	..
Attempted Robbery 3°	6	2	2	..	2	..	..	..	..	1	2
Attempted Grand Larceny 2°	4	3	..	..	1	..	..	..	..	..	1
Forgery 2° to											
Attempted Forgery 3°	7	3	2	..	..	..	2	..	..	..	..
Grand Larceny 1° to											
Grand Larceny 2°	4	..	1	1	..	..	..	..	..	..	2
Attempted Grand Larceny 2°	11	1	2	1	1	1	..	..	..	..	3
Petty Larceny	5	1	..	4	..	..	..	..	..	..	1
Grand Larceny 2° to											
Attempted Grand Larceny 2°	8	1	1	1	..	..	..	..	..	..	..
Petty Larceny	9	2	3	1	1	2	..	..	..	..	2

Burglary 3° to											
Attempted Burglary 3°	28	7	13	..	5	3	1	..	1	..	1
Attempted Grand Larceny 2°	10	3	2	..	2	1	1	..	1	..	1
Petty Larceny	6	4	1	..	..	..	..	..	1	..	1
Unlawful Entry	15	2	2	1	1	2	5	..	3	..	..
Assault 1° to											
Attempted Assault 2°	5	..	1	6	..	..	..	..	..	..	..
Assault 2° to											
Attempted Assault 2°	9	..	3	2	..	..	..	..	1	..	..
Assault 3°	8	..	..	6	..	..	..	..	1	..	..
1897 Felony to											
1897 Misdemeanors	13	3	2	4	..	2	1	..	..	..	1
Other Indictments to											
Other Lesser Pleas[e]	73	18	14	21	7	3	6	2	2	6	9

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] In 241 cases, 260 persons were second, third and fourth offenders. The average age for 81 defendants was 31.8 years; for the additional 179 defendants, the ages were unknown.

[d] A diversity of other reasons were given such as: the punishment was considered to be sufficient (6 instances); the defendant had only a simulated gun (6 instances); the value of the car was questionable (5 instances) and 7 additional diversified reasons.

[e] Other indictments to other lesser pleas included 51 cases in which felonies were reduced to lesser felonies and 22 cases in which felonies were reduced to misdemeanors.

[f] Additional sentence may be given when a gun is involved; therefore a reduced plea may be accepted in the first instance and an additional punishment may then be given.

terested in having the study made. Since Mr. Dewey's office was cooperative the files were available without any restriction. Each of the 1336 records of lesser pleas, constituting all the cases on file in the summer of 1939, was read and analyzed.[5]

Reasons for acceptance of lesser pleas are generally discussed by Prosecuting Attorneys and Judges for each case coming into the Court of General Sessions. Hearings in this Court, held during the month of July, 1939, were audited. The materials obtained from these auditions have also been used in the evaluation of the data given in the case records. It has also been possible to include in the analyses confidential memoranda concerning specific cases. In numerous conversations with members of the District Attorney's staff reasons for the acceptance of lesser pleas were discussed. These contributed to the interpretation of the justifications for reduction of indictments given in various cases.

A study of the records suggested the desirability of quantitative analysis; the report as a whole has been divided into two parts. The first includes a consideration of the pleas which group themselves into seven basic classifications: i.e., the second offender, the weak proof case, the homicide, the "any" felony, the case involving a small amount of money, the case including various reasons and the case suggesting no apparent reason for the acceptance of a lesser plea. The second section of the report embraces cases which are classified in four important groupings: cases involving the "joy-ride," the youthful offender, the offender with no previous record, and sex violations.

Since Prosecuting Attorneys and Judges place great emphasis on the fact that a defendant is a possible second felony offender, these cases have been treated as a group. Weak cases, those in which the certainty of securing a conviction by the state is in doubt, do not generally reach court, but instead are settled by a compromise plea; these too appear to merit separate analysis. Although homicide cases may be analogous to cases classified as weak, the former have been considered together because of their homogeneity. A defendant with a prior record, i.e., a series of misdemeanors, is likely to have to accept some felony plea. This is so apparent in a substantial number of cases that they have been treated separately. In a number of instances, the small amount involved is given as the dominant reason for reducing the indictment; it seems logical to analyze these cases as a group.

The classification, "various reasons," indicates that more than one reason was cited for the acceptance of a lesser plea and that no one reason was dominant. Cases for which no apparent reason for the reduction of the indictment exists have been segregated; inasmuch as it has not been possible to discern the reasons for the acceptance of lesser pleas in these instances, they seem important.

The first section, including the seven classifications outlined above, presents the general problem. The second section, embracing the "joy-ride," youth,

[5] Reports on all cases for which lesser pleas have been accepted are, according to the procedure of the District Attorney's office, to be filed. It is not possible to state whether or not this occurs in every instance. The vast majority of the cases, however, follow this procedure.

no record and sex cases will be presented in the latter part of this article.

Second Offender

If a defendant is a second, third, or fourth offender, punishment according to the first count of the new indictment is often considered, in the judgment of an Assistant Prosecuting Attorney or the Judge or both, to be too severe. Moreover, the Prosecutor knows that if he allows such cases to go to trial on the original indictment, the jury, motivated by the same thought, will not, in a large percentage of the cases, bring in a conviction.

The attitudes taken by the Prosecutor and judiciary result from the nature of the penalties provided by the law. In the case of a person convicted of a second or third felony, the minimum sentence cannot be less than the maximum term for such an offense when committed by a first felony offender. The maximum for such an offense by a second offender is required to be twice this amount.[6] Punishment for fourth and subsequent felonies committed by a defendant is even more severe than that for second offenses. If any felony is involved the term cannot be less than 15 years. The maximum punishment then becomes imprisonment for natural life.[7] Public reaction to an increased crime rate was responsible for the atmosphere in which these rigorous laws were passed.

The position taken by both Assistant Prosecuting Attorneys and Judges reflects their recognition of the inapplicability of the law to specific cases involved. For example, a third offender was indicted for violation of Section 408 of the Penal Law as a felony. If he had been convicted of the felony he would have become a fourth offender; such a conviction would have meant a minimum punishment of 15 years and a maximum term of life imprisonment. A plea to Unlawful Possession of Burglars' Tools, as a misdemeanor, was accepted instead by the Court. The following statement from the report of the case illustrates the point of view.

> "It did not seem just to subject this defendant to the penalties which would flow from a fourth felony conviction, from the mere fact of his possession of a screw driver in his pocket."[8]

In another case the defendant broke into a vacant apartment and took two faucets. He was subsequently indicted and brought to trial on a Burglary Third Degree charge. After the evidence was submitted, the Judge commented that if the defendant were convicted of a felony, as a second offender, he would have to serve a sentence of 7 to 14 years. In his opinion this was out of all proportion to the act which constituted the crime. He felt that the defendant ought to plead guilty to a charge of petty larceny.[9] In accordance with the recommendation of the Judge, the defendant made the plea to the reduced charge and the Court accepted it.

The acceptance of a reduced plea for 241 cases was attributable (Table I), in a major degree, to the fact that the defendants were second offenders. In 78 of these cases, felonies were reduced to

[6] Penal Law, Sec. 1941.
[7] Penal Law, Sec. 1943.
[8] Files of the District Attorney's office.
[9] This is one of the few reports which revealed aggressive judicial participation.

TABLE II

Weak Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	*Cases*[d]	*Reasons for Reduction of Indictments*[b]											
	Total	*Difficult to Prove Indictment*	*Value of Article Questionable*	*Brawl*	*Unreliability of State's Witness*	*Conflicting Evidence*	*Defendant Drunk*	*Restitution*	*Small Amount*	*Reluctant Complainant*	*Lack of Identification of Defendant*	*Lack of Corroboration*	*Other*[c] *Reasons*
All Reductions	357	146	60	43	41	26	26	23	22	22	21	20	103
Robbery 1° to													
Robbery 3°	12	1	..	..	3	1	..	..	4	..	5	..	7
Assault 3°	5	1	..	1	1	1	..	..	2	..	..	1	1
Forgery 2° to													
Petty Larceny	6	4	..	..	..	..	..	1	..	1	..	1	1
Grand Larceny 1° to													
Grand Larceny 2°	12	1	7	..	1	1	1	2	..	..	2	1	4
Attempted Grand Larceny 2°	9	2	4	..	1	1	1	2	..	1	..	1	3
Petty Larceny	12	3	5	..	1	..	1	2	..	2	..	1	7
Grand Larceny 2° to													
Attempted Grand Larceny 2°	8	2	4	..	..	..	..	1	..	1	..	..	4
Petty Larceny	47	16	32	..	3	1	..	9	1	3	1	..	9

Burglary 3° to													
Attempted Burglary 3°	6	4	1	..	..	2	..	1	1	..	1	1	2
Petty Larceny	12	9	4	..	1	1	..	2	2	..	..	1	3
Unlawful Entry	10	7	1	..	..	..	1	1	1	1	..	..	3
Assault 1° to													
Attempted Assault 2°	8	1	..	2	..	..	8	..	1	3	1	..	2
Assault 3°	18	2	..	7	6	4	4	..	..	1	..	..	4
Assault 2° to													
Attempted Assault 2°	8	..	..	4	1	..	..	..	..	..	1	1	..
Assault 3°	36	3	..	21	8	3	..	..	..	2	..	5	9
408 Felony to													
408 Misdemeanor	9	9	..	..	..	..	..	..	1	..	..	1	..
1897 Felony to													
1897 Misdemeanor	45	45	..	3	..	1	2	..	2	..	..	1	5
Other Indictments to													
Other Lesser Pleas[e]	94	36	2	5	15	10	8	2	7	7	10	5	39

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] A diversity of other reasons were given such as: the case was between two or more members of the same family (15 instances); the defendant had some status in the community because of a good employment record, a good school record, etc. (15 instances); the defendant made full confession (15 instances); the punishment was considered to be sufficient (12 instances); no property was taken (8 instances); sentence sufficiently elastic to provide adequate punishment (6 instances) and 32 additional diversified reasons.

[d] In 357 cases 376 persons were indicted; 84 of these had criminal records, 90 had no criminal record and the records for 202 persons were unknown.

[e] Other indictments to other lesser pleas included 56 cases in which felonies were reduced to lesser felonies and 38 cases in which felonies were reduced to misdemeanors.

misdemeanors; in the remaining 163 cases the reduction was to a lesser felony (Table XII).

In dealing with persons who were likely to be punished as second, third, or fourth offenders, the District Attorney appeared to be influenced in the reduction of the indictment by additional circumstances. Other contributory causes, such as sufficient punishment, small amount involved and weak cases were most often cited. The small amount (under $50.00) appeared in the records in 55 instances. Fifty-one cases were reported as weak, i.e., it was difficult for the District Attorney, for a variety of reasons, to establish the State's case. The vestigial remains of the philosophy that the punishment must fit the crime was reflected in 53 cases in which the District Attorney or the Judge remarked, "The punishment is sufficient."

Weak Cases

Difficulties in securing convictions are attributable to a variety of causes in weak cases. One of these exists when proof of the indictment rests on a legal technicality. For example, to convict a person of grand larceny in the first degree, it must be proved that the value of the property involved is $500.00. In homicide cases, proof of the indictment depends on the ability to show premeditation and/or specific intent. After a series of failures to convict defendants, on the basis of uncertainty of values of second-hand merchandise, e.g., second-hand cars and fur coats, Prosecuting Attorneys are more than willing to accept a lesser plea, since to bring such cases to trial would result in a waste of the State's time and money.

A family relationship, e.g., husband assault of a wife, and a father *versus* son forgery, also constitute weak cases from the point of view of the State. Emotional ties being stronger than legal rights, conciliation between complainant and defendant is often effected and the evidence, in the State's case, disappears. The nature of the State's witnesses affects the strength of the case. Since society brands drug addicts, prostitutes and persons with prior felony convictions as notorious or immoral, they are considered poor risks as witnesses. There is also the factor of the complainant in the case. One having left the State's jurisdiction may not be available at the time of the trial; he will, therefore, be considered a poor witness. The complainant who is reluctant to give testimony is of little value to the prosecution. This type of complainant is likely to be so involved himself, that, on second thought, he is anxious to have the indictment quashed; for example, a victim of a hold-up in a house of prostitution.

Even though the District Attorney is morally certain in some instances that the defendant is guilty, rather than run the risk of acquittal the Prosecutor accepts any reasonable plea. In such cases identification of the defendant may be difficult to prove or conflicting evidence may exist.

A participant in a brawl may find himself later occupying a bed in one of the city hospitals. In most instances physical injury to a complainant contributes to the strength of the State's case. The District Attorney, however, considers the complainant's position to be weak and settlement is usually the acceptance

TABLE III

Homicide Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	Cases or Defendants	Defendants[c]			Reasons for Reduction of Indictments[b]							
		Records			Lack of							
	Total	Criminal	No Criminal	Unknown	Intent	Premeditation	Defendant Drunk	Lack of Corroboration	Plea of Self Defense	Full Confession	No Reason Given	Other[d] Reasons
All Indictment Reductions	43	3	16	24	13	8	8	7	5	5	5	29
Murder 1° to Murder 2°	6	2	1	3	5	..	1	..	..	..	..	4
Murder 1° to Manslaughter 1°	9	..	2	7	7	..	..	3	2	1	..	4
Murder 2° to Manslaughter 1°	10	..	2	8	1	6	4	1	..	1	2	4
Murder 2° to Manslaughter 2°	3	..	2	1	..	2	1	1	2	..	..	1
Manslaughter 1° to Manslaughter 2°	13	1	8	4	..	..	2	2	..	3	3	12
Manslaughter 1° to Assault 1°	2	..	1	1	..	..	..	..	1	..	..	4

[a] Cases obtained from the files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] The average age of 14 defendants was 34.3 years; for the additional 29 defendants, the ages were unknown.

[d] A diversity of other reasons were given such as: the punishment was considered to be sufficient (4 instances); the indictment was difficult to prove (4 instances); lack of corroboration between complainants' and defendants' testimonies (3 instances); the case was just another brawl (3 instances); and 14 additional diversified reasons.

of a simple assault plea when both participants have known each other for some time or merely long enough to get drunk together. The brawl is often the result of an argument over some personal matter, such as the merit of each other's relatives or friends. In trade nomenclature these cases are referred to as "just another brawl!"

For the 357 cases which were classified as "weak" the reason most frequently cited for reduction of the charge was that it was difficult to prove the indictment. This was indicated 146 times. In addition, the questionable value of the article stolen appeared as a factor in 60 instances (Table II). Since the latter condition also makes the charge difficult to prove these reasons for reduction may be included with the former group.

A review of the cases suggests that it might be advisable for the indictment bureau to draw original charges with a less lavish hand. A disturbing thought occurs. May the process of "bargaining" have become the accepted procedure, so that lesser indictments would merely place the State at a disadvantage?

Homicide

Six defendants indicted for murder in the first degree pleaded guilty to a charge of murder in the second degree. This meant a punishment of death or life imprisonment reduced to a term of 20 years of life (Table III). In one of these cases, the Judge presented his opinion to the jury in the following words: "I don't think there was any premeditation or deliberation. I think it was a killing on the impulse of the moment."

Nine additional men charged with murder in the first degree agreed to plead to manslaughter in the first degree. The latter carries a prison term up to 20 years. The reduction of these indictments and those for 28 additional homicide records occurred because, for one reason or another, the case was considered to be a poor risk. Inability to prove intent or premeditation and lack of corroboration were commonly found in the records. Because of these factors, acquittals would have probably resulted had these cases gone to court on the original indictment. Under the circumstances, a conviction on a lesser charge was considered to give substantial justice.

Any Felony

"I won't accept a misdemeanor plea. It is about time this man had a felony on his record. He can't keep 'getting away with it' forever."

This Judge's reaction was based on the fact that the defendant had a long criminal record. In earlier felony charges against this defendant however, dismissals had occurred and pleas had been reduced from felonies to misdemeanors. This most recent crime was considered to merit some felony conviction. In cases such as this, a plea to any felony conviction which is at all appropriate is accepted. Reasons given for the reduction of pleas here include the arguments that the amount involved is a trifling one; that some plan exists for restitution; or that the defendant has indicated his good will by confessing (Table IV).

TABLE IV

Any Felony Plea Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	Defendants[c] Total	Cases Total	Reasons for Reduction of Indictments[b]: Defendants Prior Arrests or Convictions 1-3 (incl.)	Defendants Prior Arrests or Convictions 4 or Over	Small Amount	Restitution	Sufficient Punishment	Full Confession	Simulated Gun	Other[d] Reasons
All Indictment Reductions....	62	58	36	26	14	9	7	5	3	11
Burglary 2° to										
Attempted Burglary 3°...	3	3	1	2	..	1	..	..	..	..
Burglary 3° to										
Attempted Burglary 3°...	19	18	11	8	4	4	3	1	..	3
Attempted Grand										
Larceny 2°	4	3	4	..	..	1	1	1	..	..
Grand Larceny 1° to										
Attempted Grand										
Larceny 2°	5	9	4	1	3	2	..	1	..	3
Grand Larceny 2° to										
Attempted Grand										
Larceny 2°	9	4	4	5	1	..	..	..	..	1
Other Indictments to										
Other Lesser Felonies....	22	21	12	10	6	1	3	2	3	4

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] The average age of 31 defendants was 28.9 years; for the additional 31 defendants the ages were unknown.

[d] A diversity of other reasons were given such as: no property was taken (2 instances); the defendant was drinking (2 instances); the plea accepted covers two indictments (2 instances) and 5 additional diversified reasons.

TABLE V

Small Amount Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	Defendants[c]				Cases	Reasons for Reduction of Indictments[b]					
		Records				Amount in Dollars					
	Total	Criminal	No Criminal	Unknown	Total	Under 5	5 to 10	10 and Over	Sufficient Punishment	Real or Simulated Gun	Other[d] Reasons
All Reductions	86	39	15	32	78	30	10	38	10	10	31
Robbery 1° to Robbery 2°	5	3	..	2	4	..	..	4	..	1	3
Robbery 3°	16	7	1	8	16	5	2	9	4	5	5
Attempted Robbery 3°	5	2	1	2	4	2	..	2	1	1	..
Assault 2°	5	2	..	3	5	5	..	..	1	..	..
Attempted Assault 2°	3	..	..	3	3	..	2	1	..	..	1
Forgery 2° to Petty Larceny	8	5	..	3	8	2	2	4	..	..	5
Grand Larceny 1° to Attempted Grand Larceny 2°	4	1	..	3	3	2	1	..	..	..	4
Burglary 3° to Petty Larceny	13	5	6	2	11	1	1	9	..	..	6
Unlawful Entry	5	3	..	2	5	4	..	1	1	..	3
Other Indictments to Other Lesser Pleas[e]	27	11	7	4	19	9	2	8	3	3	4

[a] Cases obtained from files of the District Attorney's office, New York County, July 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] The average age of 29 defendants was 27.8 years; for the additional 57 defendants, the ages were unknown.

[d] A diversity of other reasons were given such as: restitution of property stolen was made (6 instances); the defendant made a full confession (6 instances); the defendant was drunk (5 instances) and 14 additional diversified reasons.

[e] Other indictments include 14 cases in which felonies were reduced to lesser felonies and 5 cases in which felonies were reduced to misdemeanors.

Twenty-six of the 62 defendants in these cases had four or more prior arrests or convictions. The remaining 36 had a record of one to three prior arrests or convictions. Persons who fear the possible dangers of a situation in which defendants go through life escaping serious convictions will derive some comfort from the thought that Prosecuting Attorneys seem to be on the watch for defendants with substantial prior misdemeanor records. For such defendants justice is not considered to be effected in the acceptance of another misdemeanor charge. Instead, a conviction to any felony plea is recognized as giving sufficient scope for punishment.

Small Amount

Victor Hugo's Jean Valjean began a long criminal career through the theft of a loaf of bread. Under the present status of the New York State law a defendant can be "sent up" for as little as a 67 cent robbery or even a lesser sum. In more than one-half of the cases involving small amounts of money, the sums stolen were under ten dollars (Table V). The following is typical of these cases: "The defendant seized a pocketbook at 11:45 A.M. worth about $1.00; it contained only $1.23. Other than mere contact in grabbing, there was no assault." In many of the small amount cases the records state that it would be unfair to send a man to the penitentiary for the trifling sum involved in the case. The accommodation accepted in these cases is a reduction of the original indictment.

Various Reasons for Reduction of the Indictment

A defendant has made a full confession and has returned the property. The amount taken was small; the defendant was drunk when the incident occurred. The defendant's family is in dire need, his mentality is low and he has no prior criminal record. Not one but a combination of reasons is responsible for the reduction of the indictment in a case such as these. The fact that the defendant was drunk is not the only consideration in the acceptance of the lesser plea; it is the combination of the pertinent factors here which is significant.

In an enumeration of reasons, cited in 167 cases similar to the above, the following causes for reduction appeared most often: the defendant took no property; he has returned the property; he made a full confession; he will receive sufficient punishment from the acceptance of a lesser plea (Table VI). In each case analyzed two or more of these reasons were considered in the reduction of the indictment.

Other factors, combined with these or with each other, also contributed to the reduction. One—the defendant's community status—appears to depend on such variables as "good employment record," "good school record," "honorable discharge from the United States Army," and a relationship to one of the "substantial" citizens in town, who will assume responsibility for the defendant.

No Apparent Reason for the Acceptance of a Lesser Plea

In 84 cases or about six per cent of the total records analyzed, no apparent

TABLE VI

Various Reasons for Reduction of Indictment Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	Defendants[c]				Cases	Reasons for Reduction of Indictments[b]										
		Records														
	Total	Criminal	No Criminal	Unknown	Total	Restitution	Full Confession	Sufficient Punishment	No Property Taken	Cooperative Defendant	Two Indictments	Small Amount	Community Status	Economic	Defendant Drunk	Other[d] Reasons
All Reductions	188	77	34	77	167	40	24	24	24	21	20	19	13	12	11	41
Robbery 1° to																
Robbery 2°	5	1	..	4	5	..	1	1	..	..	..	1	..	..	..	1
Robbery 3°	18	3	7	8	12	2	1	2	1	..	5	3	..	1	..	3
Attempted Robbery 1° to																
Attempted Robbery 3°	3	..	..	3	3	..	..	..	3	..	..	..	..	..	..	2
Grand Larceny 1° to																
Grand Larceny 2° ..	6	3	1	2	5	3	1	..	..	..	..	..	..	1	1	2
Petty Larceny	6	2	3	1	6	3	1	2	..	..	..	..	2	2	..	2
Grand Larceny 2° to																
Attempted Grand Larceny 2°	11	5	2	4	10	7	1	2	..	..	..	..	2	1	..	2
Petty Larceny	21	10	4	7	16	8	1	1	1	4	1	..	2	1	..	3
Burglary 3° to																
Attempted Burglary 3°	8	4	2	2	7	2	1	..	2	..	..	2	..	..	1	..

Grand Larceny 2° ..	4	2	1	1	3	2	..	..	..	..	..	..	..	..	..	..
Attempted Grand Larceny 2°	4	3	..	1	3	1	1	2	1	..	..	..	..	..	..	..
Petty Larceny	7	4	2	1	5	2	1	..	..	..	..	1	1	..	..	2
Unlawful Entry ...	18	10	4	4	17	3	3	4	4	3	..	4	2	1	3	6
Attempted Burglary 3° to Unlawful Entry	4	3	..	1	4	..	2	..	4	..	..	..	..	2	..	..
Assault 2° to Assault 3°	5	2	..	3	5	..	..	1	..	..	..	..	..	..	2	..
408 Felony[f] to 408 Misdemeanor...	8	5	..	3	8	..	2	2	1	..	..	..	..	1	..	2
1897 Felony[g] to Robbery 3°	3	..	..	3	3	..	..	..	..	..	2	2	..	..	..	..
Other Indictments to Other Lesser Pleas[e].	57	20	8	29	55	7	8	7	7	14	12	6	4	2	4	16

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] The average age of 71 defendants was 29.2 years; for the additional 117 defendants, the ages were unknown.

[d] A diversity of other reasons were given such as: sentence sufficiently elastic to provide adequate punishment (8 instances); the defendant was a mental case (8 instances); the defendant was carrying a gun (8 instances); punishment was considered to be sufficient (7 instances) and 14 additional diversified reasons. Additional sentence may be given when a gun is involved; therefore a reduced plea may be accepted in the first instance and an additional punishment may then be given.

[e] Other indictments to other lesser pleas included 37 cases in which felonies were reduced to lesser felonies and 18 cases in which felonies were reduced to misdemeanors.

[f] Penal Law Sec. 408 involves the crime of possession of burglar's instruments.

[g] Penal Law Sec. 1897 involves the crime of carrying and using dangerous weapons.

reason was given for the reduction of the indictment, although the law requires that the written reason be filed with the case (Table VII). Most of these cases came from one of the busiest subdivisions of the New York District Attorney's office. Treatment of the legal requirements in a cavalier manner may be attributable to pressure of work. On the other hand, the desire to settle the case quickly or lack of sympathy with the law may result in no specific reason being noted on the record.

Conclusions

Since one-quarter of the cases analyzed were classified as weak, for a variety of reasons, one of which was the difficulty of proving the indictment; it is evident that indictments are too optimistically drawn in the first instance. Should the indictment bureau frame the charge on the basis of what from past experience it appears probable can be proved, a decrease in the necessity of lesser pleas might occur.

Reasons given for the reduction of indictments, filed pursuant to Section 342a of the Code of Criminal Procedure, when analyzed fall into patterns of uniformity. Most Prosecuting Attorneys appear to be content with the formulae: "punishment is sufficient"; "sentence is elastic enough to result in justice"; "another brawl"; "a second offender"; and so forth. Applicable sentences for specific types of crimes undoubtedly tend toward uniformity of punishment. What relationship if any does this have to making the punishment fit the individual? May there not be a series of reasons, psychological or sociological in type which are being entirely overlooked? It is evident that the simplest procedure for overworked Prosecuting Attorneys is to have a group of stock reasons that can be listed for specific cases. Since, at the present time, the Court of General Sessions employs psychologists and social workers primarily for the purpose of determining the severity of the sentence it might be worth while to postpone acceptance of a plea until the results of the investigations of these specialists are available.

Lesser Pleas Considered

II

Society is likely to be less severe in its punishment of young offenders lacking a serious criminal record than those of middle or advanced years.[10] Three of the groups of cases now to be considered have the element of youth in common. There is also a fourth classification involving the offender with no prior record, the offender without experience. The "joy-ride" case, the case of the offender under 21, the violator of the sex mores are the first three groups to be analyzed. Since the defendant with no criminal record need not necessarily be young, the fourth group has been established here because such offenders are also, like many youthful defendants, inexperienced.

The objective of this portion of the study is the analysis of reports which give reasons for acceptance of lesser pleas. One group of cases is peppered with the remark, "joy-ride." A sufficient number of these existed to merit their consideration as a separate classification. When the defendant is under

TABLE VII

No Apparent Reason for Reduction of Indictment Cases, Classified by Extent of Reduction of Indictments and Criminal Records of Defendants[a]

Extent of Reduction of Indictment	Cases Total	Defendants[b]			
		Number of Total	Records		
			Criminal	No Criminal	Unknown
All Reductions	84	96	47	7	42
Robbery 1° to					
Robbery 2°	4	5	4	1	..
Robbery 3°	8	11	4	2	5
Grand Larceny 1° to					
Grand Larceny 2°	3	4	3	..	1
Grand Larceny 2° to					
Attempted Grand Larceny 2°	5	5	2	..	3
Petty Larceny	3	3	2	..	1
Burglary 3° to					
Attempted Grand Larceny 2°	4	4	..	..	4
Petty Larceny	3	3	1	..	2
Unlawful Entry	4	5	3	2	..
Assault 2° to					
Assault 3°	3	3	..	..	3
408 Felony to					
408 Misdemeanor	4	4	4	..	..
1897 Felony to					
1897 Misdemeanor	5	5	2	1	2
Other Indictments to					
Other Lesser Pleas[c]	38	44	22	1	21

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] The average age of 18 of the defendants was 27.3years; for the additional 11 defendants the ages were unknown.

[c] Other indictments to other lesser pleas include 27 cases in which felonies were reduced to lesser felonies and 11 cases in which felonies were reduced to misdemeanors.

TABLE VIII

Joy-Ride Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	Defendants[c]				Cases Total	Reasons for Reduction of Indictments[b]				
	Total	Records				Restitution	Defendant Drunk	Car Value Questionable	Full Confession	Other[d] Reasons
		Criminal	No Criminal	Unknown						
All Reductions	55	13	27	15	49	28	22	13	8	15
Grand Larceny 1° to										
Grand Larceny 2°.	4	1	1	2	4	3	2	1	..	3
Petty Larceny	25	6	11	8	22	13	9	2	6	8
Grand Larceny 2° to										
Petty Larceny	25	6	14	5	22	12	11	10	2	4
Burglary 3° to										
Unlawful Entry ...	1	..	1	..	1	..	..	..	..	..

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] The average age of 37 defendants was 22 years; for the additional 18 defendants the ages were unknown.

[d] A diversity of other reasons were given, such as: the punishment was considered to be sufficient (5 instances); the complainant was reluctant to press the charge (2 instances); the indictment was difficult to prove (2 instances) and 6 additional diversified reasons.

21 years of age this fact weighs heavily in determining the attitudes of the District Attorney and the Judge. Because these defendants are treated as adolescents, the cases are presented here as a unit. Persons without a criminal record are likely to secure a reduction of the indictment. Cases in which this factor appeared as the dominant reason were again segregated for analysis. Lastly, criminal cases in which sexual intercourse is voluntary on the part of both participants constitute a homogeneous group. This is not the situation in the true rape cases and these have been included under other classifications.

Joy-ride

A young man, perhaps drunk, a car parked near a curb, and a summer night are frequently elements responsible for what is popularly known as a "joy-ride" case. Technically this is called larceny of an automobile. For the charge of Grand Larceny in the first degree, the market value of the car must be $500.00; for Grand Larceny in the second degree, it must have a worth of $100.00. Past experiences have convinced Prosecuting Attorneys of the difficulty of proving to the satisfaction of juries the values of stolen cars. Jurors who have tried to sell their own cars are skeptical of so-called "expert testimony." Then, too, young members of the Prosecuting Attorney's office and, on occasion, even the Judge himself can possibly remember an instance when it seemed appropriate to make use of an easily available car. Thus, regardless of the original indictment or the strength of the case, the office is likely to accept a plea of guilty to petty larceny. As one member of the staff put it, "Why dignify it with a felony?"

In 45 of the 49 "joy-ride" cases, in place of a felony, a misdemeanor plea was accepted (Table VIII). This suggests that perhaps a statute setting up a new misdemeanor, omitting all consideration of the value of the car, might be useful.

Youth

The elasticity of sentence, permitted under the penal law, in many instances makes possible, under a reduced indictment, the same punishment as might have been given for a conviction under the first count. Therefore, if the Prosecuting Attorney accepts a lesser plea, he argues that the punishment for the crime is likely to be little changed. In 22 of the 145 cases, the reduction was from Robbery in the first degree to Robbery in the third degree. The punishment for Robbery in the first degree ranges from a minimum of ten to a maximum of thirty years; for Robbery in the third degree, the statute provides for a sentence of not more than ten years. A judge who sentences a youthful defendant under Robbery in the first degree, is not likely to give him more than the minimum punishment, ten years. The same sentence may be pronounced following acceptance of a plea of Robbery in the third. The unsophisticated defendant thinks the reduction of charge is an advantage and the District Attorney is satisfied with a certain conviction.

Ninety of these 189 defendants (under 21 years of age) had no criminal record. Since the previous records

TABLE IX

Youth Cases, Classified by Extent of Reduction of Indictments and Reasons for Reduction[a]

Extent of Reduction of Indictment	Defendants	Cases	Defendants Records			Reasons for Reduction of Indictments[b]							
	Total	Total	Criminal	No Criminal	Unknown	Small Amount	Restitution	Full Confession	Difficult to Prove Indictment	Simulated Gun	Sufficient Punishment	Community Status	Other[c] Reasons
All Reductions	189	145	60	90	39	30	25	18	14	8	8	7	34
Robbery 1° to Robbery 2°	6	5	4	2	..	3	..	1	..	1	2	..	..
Robbery 3°	32	22	12	12	8	6	..	1	2	3	1	1	4
Attempted Robbery 3°	5	4	..	3	2	2	..	..	2	1	1	..	..
Grand Larceny 2°	8	5	2	5	1	4	3	2	1	..	..	1	..
Attempted Robbery 1° to Attempted Robbery 3°	5	5	1	3	1	..	..	1	1	1	..	..	..
Grand Larceny 1° to Petty Larceny	4	4	..	4	..	2	1	1	..	..	2	..	..
Grand Larceny 2° to Petty Larceny	15	11	1	7	7	..	4	2	1	..	..	..	4
Burglary 3° to Attempted Burglary 3°	13	9	9	2	2	..	4	2	..	..	1	..	4
Petty Larceny	12	8	6	4	2	2	3	2	1	..	..	..	2
Unlawful Entry	32	23	7	17	8	2	6	3	..	..	1	..	9
1897 Felony to 1897 Misdemeanor	8	8	5	2	1	..	..	..	4	1	..	2	1
Other Indictments to Other Lesser Pleas[d]	49	41	13	29	7	9	4	3	2	1	..	3	10

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] A diversity of other reasons were given, such as: no property was taken (6 instances); the defendant was cooperative (5 instances); the defendant was in economic difficulties (5 instances); the punishment was considered to be sufficient (3 instances) and 15 additional diversified reasons.

[d] Other indictments to other lesser pleas include 22 cases in which felonies were reduced to lesser felonies and 19 cases in which felonies were reduced to misdemeanors.

TABLE X

Sexual Intercourse Cases, Classified by Extent of Reduction of Indictment and Reasons for Reduction[a]

Extent of Reduction of Indictment	Persons or Cases	Defendants[c]			Reasons for Reduction of Indictments[b]						
		Records			Defendants		Society for Prevention of Cruelty to Children Satisfied	Defendants Offer to Support Child	Elasticity of Sentence	Reluctant Complainant	Other Reasons[d]
	Total	Criminal	No Criminal	Unknown	Offer to Marry Complainant	Admission of Paternity					
All Reductions	28	5	13	10	13	5	4	4	3	3	3
Rape 1° to											
Assault 3°	2	..	2	..	..	..	..	..	..	..	..
Rape 2° to											
Attempted 2° ...	1	..	..	1	..	..	..	..	..	..	..
Assault 2°	3	1	1	1	1	..	..	..	..	1	..
Assault 3°	22	4	10	8	12	5	4	4	3	2	3

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.

[b] Since two or more reasons were generally given for the reduction of indictments, the total number of reasons was greater than the number of cases.

[c] The average age of 17 defendants was 22.6 years; for the additional 11 defendants the ages were unknown. The average age of 28 victims of statutory rape cases was 15 years; the range in ages was between 12-17 years.

[d] Three other reasons were given: lack of corroboration between complainant's and defendant's testimonies (2 instances) and the defendant was drunk (1 instance).

were unknown for an additional 39, this meant that only 60 of the group were known to have had previous experience with the law (Table IX). The belief exists that juries are loath to convict for a serious crime, defendants who have no criminal records, who are young, attractive in personality, and who come from so-called "good homes." Under these circumstances, the expenses of a trial are generally considered to be a waste of money; the acceptance of a lesser plea gives the District Attorney the desired conviction.

Sexual Intercourse

Extra-marital sexual intercourse whether voluntary or involuntary, with a girl under eighteen years of age is statutory rape, a felony punishable by a severe sentence.[10] The 28 records of sexual intercourse in which the relationships appear to be voluntary have been segregated (Table X). Actually the ages of the victims in these cases ranged from 12 to 17 years and the average age was 15 years. In some instances a social agency, or perhaps the girl's parent, reported the illegal relationship to the authorities; the man involved was charged with rape. The severity of the charge depended on whether or not the relationship was voluntary. In 13 of the 28 cases, the defendant offered to marry the complainant, an offer which was not in all cases accepted by the complainant and/or her relatives. Four of the reports showed that the agreement of the Society for Prevention of Cruelty to Children was sought before the lesser plea in sex violations was accepted.

Since social mores differ from one nationality or racial group to another, punishment must make allowance for the variability of these mores. Twenty-four of the 28 cases were settled by a plea to a simple assault, a misdemeanor. In the acceptance of a lesser plea which enables the defendant to be free to marry the complainant and/or to support the child, a District Attorney recognizes variability in accepted culture patterns. Even more important, the responsibility for the care of one or more persons, who might otherwise become burdens to society, is placed on the defendant.

No Criminal Record

"The defendant has no criminal record." In two situations the argument that the defendant has never before come into contact with the police carries considerable weight in procuring a reduction of the indictment. One of these takes place when the defendant is very young; the other when the man charged has attained a considerable maturity without a criminal record. In both instances crimes occur from an unusual combination of personal and social variables over which the defendant appears to have little control. Persons indicted in 21 of a total of 86 cases evidenced a willingness to make restitution; in 11 instances defendants confessed to the crime (Table XI).

The social status of the defendant in the community and the fact that he was economically in straightened circumstances influenced the Prosecuting Attorney in the belief that the offender had been caught in his first misstep.

[10] Penal Law, Sec. 2010.

TABLE XI

No Criminal Record Cases, Classified by Extent of Reduction of Indictments and Reasons for Reduction[a]

Extent of Reduction of Indictment	*Cases*	*Reasons for Reduction of Indictments*[b]					
	Total	*Restitution*	*Full Confession*	*Community Status*	*Sufficient Punishment*	*Economic*	*Other Reasons*[c]
All Reductions	86	21	11	8	7	6	24
Robbery 1° to Robbery 3°	4	..	..	..	..	..	3
Forgery 2° to Forgery 3°	3	..	..	1	..	..	1
Forgery 3° to Petty Larceny	3	1	..	1	..	..	1
Grand Larceny 1° to Grand Larceny 2°	11	3	1	1	4	..	1
Attempted Grand Larceny 2°	5	..	1	1	..	1	1
Grand Larceny 2° to Attempted Grand Larceny 2°	5	2	1	..	1	..	..
Petty Larceny	13	6	1	4	..	2	2
Burglary 3° to Attempted Burglary 3°	5	2	..	..	2	..	1
Unlawful Entry	7	3	2	..	..	..	3
Assault 2° to Assault 3°	4	..	..	..	..	..	2
Other Indictments to Other Lesser Pleas[d]	26	4	5	..	..	3	9

[a] Cases obtained from files of the District Attorney's Office, New York County, July, 1939.

[b] Since more than one reason was generally given for the reduction of indictments, the number of reasons was greater than the number of cases.

[c] A diversity of other reasons were given, such as: the defendant had only a simulated gun (6 instances); no property was taken (4 instances); the defendant was drinking (3 instances) and 11 additional diversified reasons.

[d] Other indictments to other lesser pleas include 16 cases in which felonies were reduced to lesser felonies and 10 cases in which felonies were reduced to misdemeanors.

In seven records the statement was made that the acceptance of a lesser plea would result in sufficient punishment.

Conclusions

If justice is to result the law must recognize varying social standards. The results of current procedures for handling "joy-ride" and statutory rape cases provide arguments for legislation which approximates current folkways and mores. "Borrowing" a car for a ride is considered by many youths to be different from stealing property with the intent to sell. Extra-marital voluntary sexual intercourse with victims under eighteen years of age, although frowned upon in some sections of society, is more or less condoned in others. That the District Attorney has recognized varying social patterns is evidenced by the extent of the reduction of the indictments in these two types of cases. Approximately 92 per cent of the "joy-ride" cases and about 86 per cent of the voluntary sexual intercourse cases were reduced from felonies to misdemeanors (Table XII).

For the total 1336 cases, 47.8 per cent of the original felony indictments were reduced to misdemeanors. The remaining 52.2 per cent were settled by a compromise plea to lesser felony. These data indicate that in practice administrative adjustments are made to legislative severity and prove that the latter is no solution to an increasing crime rate.

The requirements of Section 342a have not acted as a deterrent to the acceptance of lesser pleas. At present, the District Attorney's office has no alternative other than the settlement of a large percentage of the cases by pleas of guilty. Neither the District Attorney's office of New York County, nor any other has the staff to bring all cases to trial. The average defendant will not plead guilty unless he feels that he is getting the better of what under any circumstances must be for him a bad bargain. Should a great majority of the cases fail to be settled, the Court calendar would become clogged and the judiciary would be so far behind in its schedule that more effective legislation than 342a would have to be evolved before the general practice of reducing indictments would be curtailed.

In an analysis of the various cases, one common characteristic is revealed: the relatively insignificant role the judiciary plays in the determination of the plea accepted. A comparable conclusion was pointed out in 1940 by the Citizens Committee on the Control of Crime in New York. "The cases are rare indeed in which the Court rejects a plea upon which the District Attorney and the defendant have agreed."[11] This raises a question of prime importance. To what extent has the process of justice moved from the halls of the legislature and the sanctuary of the judiciary to the discretion and control exercised by administrators?[12]

[11] Citizens' Committee on the Control of Crime, *Crime in New York City in 1940* committee publication, New York 1941.

[12] The authors wish to express their appreciation to Mrs. Anna M. Trinsey, a member of the staff of the English Department of Hunter College for reading the manuscript and to Miss Ruth Schmittlinger for assistance in the compilation of the quantitative data.

TABLE XII

Extent of Reduction of Indictments for 1336 Cases, Classified by Types of Cases[a]

Extent of Reduction of Indictments	Types of Cases																					
	All Classifications		Second Offenders		Weak Proof		Homicide		Any Felony		Small Amount		Various Reasons		No Apparent Reason		Joy-Ride		Youth		Sexual Intercourse		No Criminal Record	
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent
All Cases	1336	100.0	241	100.0	357	100.0	43	100.0	58	100.0	78	100.0	167	100.0	84	100.0	49	100.0	145	100.0	28	100.0	86	100.0
Felony to Lesser Felony ..	700	52.2	163	67.6	119	33.3	43	100.0	58	100.0	49	62.8	88	52.7	51	60.7	4	8.2	72	49.7	4	14.3	49	57.0
Felony to Misdeamener ..	636	47.8	78	32.4	238	66.7	..	....	..	....	29	37.2	79	47.3	33	39.3	45	91.8	73	50.3	24	85.7	37	43.0

[a] Cases obtained from files of the District Attorney's office, New York County, July, 1939.