

COOK COUNTY CRIMINAL LAW PRACTICE IN 1929: A COMMUNITY'S RESPONSE TO CRIME AND A NOTORIOUS TRIAL

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I. INTRODUCTION

This paper describes the practice of criminal law in the courts of Cook County in 1929, using a 1929 study of Cook County's criminal justice system and one high-profile case as the basis for that description. The background description of Cook County's criminal justice system and criminal law practice comes primarily from a report written by Chicago's civic leaders in 1929 entitled, *The Illinois Crime Survey* [hereinafter *Survey*].¹ It is a model of a comprehensive study of a criminal justice system. The *Survey* describes the state of the criminal justice system in Cook County, a system that was then perceived to be in crisis as the result of the influences of organized crime, political corruption, and isolation from best practices.

Against this background, I examine the transcripts and documents associated with one trial, *People v. Fisher*.² This case, a bank robbery/murder in which a bank security guard was killed, received front page attention from Chicago's newspapers during 1929 and 1930. All of the defendants were black, as was the victim. Three of

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¹ THE ILL. ASS'N FOR CRIMINAL JUSTICE, THE ILLINOIS CRIME SURVEY (John H. Wigmore ed., 1929). This study, called the "most ambitious" of its time, was modeled upon the 1925 *Missouri Crime Survey*, which led to the creation of public crime commissions in cities around the United States. RAYMOND MOLEY, OUR CRIMINAL COURTS 220 (1930). Moley was one of the authors of *The Illinois Crime Survey*.

² *People v. Fisher*, 172 N.E. 743 (Ill. 1930). This case involved several defendants; Lafon Fisher, Leon Brown, Leonard Shadlow, Melvin Jenkins, Stephen Dixon, and Herbert Hare. Fisher, Brown, Shadlow, and Jenkins were tried together. Herbert Hare was tried separately. Stephen Dixon was apprehended after the others were tried and pled guilty to murder.

the defendants, Shadlow, Brown, and Fisher, were sentenced to death and were executed.³ Defendants Herbert Hare, Steven Dixon, and Melvin Jenkins, were sentenced to life in prison. Hare and Dixon died in prison, Dixon in 1933⁴ and Hare in 1946.⁵ Jenkins was paroled in 1955.⁶ The killing in the Fisher case, while it occurred during the commission of a felony, was not premeditated.⁷

As I investigated the criminal law practice of the 1920's, I was drawn to make comparisons between modern day practice and that of the 1920's. Those familiar with modern day criminal law practice will note the development of the law post-1929 regarding the admissibility and reliability of confessions,⁸ pre-trial publicity,⁹ pre-trial discovery,¹⁰ the law of confrontation,¹¹ prosecutorial ethics,¹² right to counsel and adequacy of defense services,¹³ and issues surrounding the implementation of the death penalty.¹⁴ These "advances" in criminal procedure run counter to many of the suggestions made for reform in the late 1920's. The suggestions made by 1920's criminal

³ See ED BAUMAN, *MAY GOD HAVE MERCY ON YOUR SOUL* (1993).

⁴ Record of the Illinois Parole Board regarding Steven Dixon, July 3, 1930 (on file with the author).

⁵ Record of the Illinois Parole Board regarding Herbert Hare, Dec. 8, 1922 (on file with the author).

⁶ Record of the Illinois Parole Board regarding Melvin Jenkins, June 28, 1929 (on file with the author).

⁷ A review of the abstract of the trial testimony reveals that the bank guard was killed by the robbers after he pulled a gun and advanced toward the gang. By comparison, in an earlier notorious case, Leopold and Loeb, both white and affluent, were given life sentences for a crime that involved kidnapping and killing a young boy. See, e.g., HAL HIGDON, *THE CRIME OF THE CENTURY* 261-70 (1975).

⁸ See *Dickerson v. U.S.*, 530 U.S. 428 (2000); *Miranda v. Arizona*, 384 U.S. 246 (1966); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Brown v. Mississippi*, 297 U.S. 278 (1936).

⁹ See *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Irvin v. Dowd*, 366 U.S. 717 (1961).

¹⁰ See *Strickler v. Green*, 527 U.S. 263 (1994); *Brady v. Maryland*, 373 U.S. 83 (1963).

¹¹ See *Cruz v. New York*, 481 U.S. 186 (1987); *Bruton v. U.S.*, 391 U.S. 123 (1968).

¹² See ABA MODEL RULES OF PROFESSIONAL CONDUCT, Rule 3.8. The Illinois version of rule 3.8, unlike the model rule, states that: "(a) the duty of a public prosecutor or other government lawyer is to seek justice, not merely to convict." ILLINOIS RULES OF PROFESSIONAL CONDUCT, Rule 3.8(a).

¹³ See *Strickland v. Washington*, 466 U.S. 668 (1984); *Argersinger v. Humlen*, 407 U.S. 25 (1972); *Gideon v. Wainwright*, 372 U.S. 355 (1963); *Betts v. Brady*, 316 U.S. 455 (1942).

¹⁴ See, e.g., *Furman v. Georgia*, 408 U.S. 238 (1972) (holding Georgia's death penalty scheme unconstitutional because it created a substantial risk that it would be enforced in an arbitrary and capricious manner); *Gregg v. Georgia*, 428 U.S. 153 (1976) (upholding the constitutionality of Georgia's new death penalty sentencing scheme that provides carefully drafted standards to govern the application of the death sentence); *Woodson v. North Carolina*, 428 U.S. 280 (1976) (holding mandatory death for first degree murder unconstitutional).

reform commissions included limitation of the right to jury trial, more joint trials of co-defendants, and permitting comments on a defendant's failure to testify.¹⁵ Comparisons between old and new will reveal that despite the advances made in the development of the law, the modern system of justice relies as much as the old one did on the integrity, skill and vision of those who manage justice, including the police as well as the lawyers and judges who try cases. New constitutional safeguards, while they increase the potential for justice to be done, do not guarantee integrity, fairness, and impartiality. Perhaps the best example of our modern system's shortcomings is the uncovering of many wrongful convictions, particularly in death penalty cases. These wrongful convictions (thirteen in Illinois alone) occurred in the modern day, despite decades of improvements in procedural protections.

An empirical study of the racial composition and economic status of the lawyers, defendants, and judges who have populated the Criminal Court of Cook County is beyond the scope of this essay. However, no one can deny that criminal practice in today's Cook County Criminal Court involves primarily the prosecution and defense of young black men. A substantial proportion of defendants in Cook County have always been designated as indigent.¹⁶ These racial and economic facts affect all aspects of Cook County's past and existing criminal justice system, including the care with which prosecutions were and are conducted, the resources devoted to the defense of criminal cases, and the attitudes and qualities of judges who preside over trials and administer Cook County's courts.¹⁷

¹⁵ MOLEY, *supra* note 1, at 94–100.

¹⁶ In 1923, The Chicago Bar Association's Committee on Defense of Prisoners estimated that "half of those arrested for crimes could not afford counsel." Consequently, volunteers had to be found annually for more than 600 cases. HERMAN KOGAN, *THE FIRST CENTURY, THE CHICAGO BAR ASSOCIATION 1874–1974*, at 166 (1974). By 1947, the Cook County Public Defender was representing almost 1300 defendants per year, over half of criminal cases in Cook County. EMERY A. BROWNELL, *LEGAL AID IN THE UNITED STATES 201–02* (1951). In 1989, 78% of defendants in local jails around the country had assigned counsel. STEVEN K. SMITH & CAROL J. DEFANCES, *BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, INDIGENT DEFENSE 4* (1996). In 1996, publicly financed counsel represented 82% of felony defendants in the 75 most populous counties in the U.S. CAROLINE WOLF HARLOW, *BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, DEFENSE COUNSEL IN CRIMINAL CASES 5* (2000).

¹⁷ To prove this point, as it relates to the present day, a field trip is suggested. Visit the criminal court of Cook County, located at 26th & California. Then visit the Richard J. Daley Center in Chicago's Loop, the Cook County courthouse in which civil cases are heard. Visit the Dirksen Federal Courthouse in the Loop, where both criminal and civil federal cases are heard. Compare and contrast.

In 1929, the “new” criminal court and Cook County Jail and court complex was opened. The *Fisher* case was one of the first tried in that building. One Chicago newspaper noted that the new jail had “1302 cells each with running water and other conveniences.”¹⁸ Today, the Cook County Jail complex houses 10,000 inmates.

II. THE CULTURE OF THE CRIMINAL PRACTICE IN THE 1920’S: AN OVERVIEW

I begin with a very brief overview of the criminal practice in the Cook County Circuit Courts during the 1920’s. This overview is based primarily upon accounts contained in *The Illinois Crime Survey*.

The *Survey*, initiated by the Illinois State Bar Association and funded by the Industrial Club of Chicago, was a massive undertaking comprising 1100 pages and including detailed statistical analyses of the operation of criminal courts throughout Illinois, as well as the results of observations of the system and interviews of the key participants.¹⁹ Key collaborators included judges, lawyers, academicians, and law enforcement officials.²⁰ The *Survey* included examination of the functions of both the trial and appellate courts, as well as the performance of police, judges, and prosecutors.²¹ In addition, the *Survey* focused on the role of organized crime in Chicago, finding that the courts, prosecutors, and police were too often subject to corrupt influences.²² Although the *Survey* was billed as an objective scientific study of the criminal justice system (which it was), there can be little doubt that the reality of corruption in the system in the 1920’s prompted high-minded citizens of Chicago to organize and to back this *Survey* in order to promote the creation of a corruption-free and more efficient system. There are indications that the court system it-

¹⁸ *Complete Plans for Abandoning Old County Jail*, CHI. TRIB., Mar. 1, 1930

¹⁹ See THE ILL. ASS’N FOR CRIMINAL JUSTICE, *supra* note 1.

²⁰ *Id.*

²¹ Most recently in Cook County, the Chief Judge of the Criminal Court has appointed a Special Prosecutor to look into allegations that, in the 1980’s, a particular group of police detectives tortured suspects at Chicago’s Area 2 headquarters. *In Re Appointment of Special Prosecutor*, No. 2001 Misc. 4 (Cir. Ct. Cook County April 24, 2002) (Mem. Op. and Order appointing Special Prosecutor). As of the publication of this article, a group of lawyers have sought to disqualify the Office of the State’s Attorney of Cook County and all Cook County judges from participation in cases in which defendants allege that they were tortured by Area 2 detectives. Jerry Crimmins, *Sweeping Requested is “Novel,”* CHI. DAILY L. BULL., July 23, 2002, at 3; Steve Mills, *Plea Made for Outside Judges; Request is Filed in Burge Cases*, CHI. TRIB., July 23, 2002, at 1N.

²² THE ILL. ASS’N FOR CRIMINAL JUSTICE, *supra* note 1, at 815–1087.