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CRIMINAL PROCEDURE

Hon. Herbert S. Hadley of Missouri, as head of the Committee on Criminal Procedure and Judicial Administration of the National Crime Commission, has now presented to the Bar of the country an outline for a Code of Criminal Procedure. Note the names of the other men who had part in the preparation of this outline, namely: Judson A. Harmon, former Governor of Ohio; Roscoe Pound, Dean of Harvard Law School; John H. Wigmore, Dean of Northwestern U. Law School; J. H. Banton, District Attorney of New York County; U. S. Webb, Attorney General of California; Oscar Hallam, former Judge of Supreme Court of Minnesota; Marcus Kavanaugh, Judge of Superior Court of Chicago; E. R. Keedy, Professor at U. of Pennsylvania and former Judge Advocate of U. S. Army; Geo. M. Napier, Attorney General of Georgia; Col. Philip S. Van Cise, former District Attorney of Denver; J. Weston Allen, former Attorney General of Massachusetts; Dan Moody, Attorney General of Texas.

The outline can not be presented in full for lack of space, but the complete outline, together with a statement of reasons by the Committee, may be obtained by sending the sum of 25c for the October number of the American Bar Association Journal, 209 LaSalle St., Chicago. Briefly summarized, the outline presents the following:

1. Every person charged with felony to be immediately taken before a magistrate, informed of his rights, given opportunity to make public statement.
2. Prosecution by indictment or information, naming or stating offense, bill of particulars for good cause shown.
3. Bail to be commensurate with crime and criminal record of defendant; examination of bondsmen under oath, false statements making

them liable for perjury; declaration of forfeiture to stand as final judgment upon which execution may issue unless defendant is produced in ten days.

4. Defendant shall be represented by counsel; Judge to keep a list; Bar Associations to co-operate.

5. State to have same right to secure disqualification of Judge as defendant.

6. Jurors to be citizens, able to read and write, never convicted of felony; reading of case or formation of opinion not to disqualify juror if Judge believes he can render a fair and impartial verdict; no reversal because juror was not qualified.

7. State and defendant to have same number of Peremptory Challenges.

8. Defendants jointly charged to be tried jointly unless Judge orders separate trial in interests of justice.

9. Failure of defendant to testify may be commented on by Judge and counsel.

10. Testimony permitted on deposition provided it was given in presence of other party with privilege of cross-examination; such depositions may be taken in advance of trial upon showing that witness is likely to leave jurisdiction.

11. Presumption of innocence shall only extend to the placing of burden of proof on the state.

12. Judge should have right to comment on evidence; failure to instruct on point of law shall not be subject of reversal unless requested by defendant; instructions and comment to be recorded.

13. Where death penalty may be imposed, verdict shall be unanimous; other felony cases, a five-sixth verdict sufficient; in misdemeanor cases jury shall be composed of six and five may convict; jury trial may be waived by defendant; jury shall decide question of guilt only; defendant's criminal record shall be ascertained before sentence, and Judge may seek information as to mental condition.

14. On appeal, in addition to issues raised by defendant, Court shall pass on rulings adverse to State; State may also appeal except on verdict of not guilty; "On hearing of appeal a judgment of conviction shall not be reversed on ground of misdirection of the jury or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the appellate court, after an examination of the record before the court, it shall appear that the error complained of has resulted in a miscarriage of justice." (Note statement of a practicing attorney elsewhere in this issue, on this particular quoted point.)

15. Appellate court may call witnesses or receive affidavits re disputed questions of fact relating to procedure, or may call on trial court to examine and correct statement; punishment may be reduced without remanding for new trial; in capital cases record must be reviewed, and counsel supplied for indigent defendants, same to be paid by county.

16. On new trial defendant shall be subject to original charge, though first conviction was for lesser offense.

17. Before pardon or parole prosecuting officer shall have reasonable notice and opportunity to appear and be heard; public statement of reason shall be made five days before parole or pardon becomes effective.

18. Defendant shall remain in custody on appeal unless in opinion of Court there is reasonable ground for appeal; appellate court shall also have power to issue such certificate, on application.

19. (a) Plea of insanity shall be presented ten days before trial; (b) If defendant appears to the court, or is claimed, to be insane at time of trial he shall not be tried but confined in a proper institution; if later found sane, he shall be tried, without prejudice by lapse of time; (c) If insanity at time of commission of offense is claimed Judge shall call qualified experts, not exceeding three, and shall present names and addresses of experts to both sides, but this shall not preclude calling of other experts by either side; (d) If jury finds defendant was insane at time of an act or omission, but did the act or made the omission, it shall return a special verdict "that the accused did the act or made the omission but was not guilty of the crime charged by reason of his insanity"; (e) If such special verdict is found, the Court shall immediately order inquisition to determine if defendant is insane and a menace to public safety; if found sane he shall be discharged, if not, he shall be committed to proper institution.

20. No dismissal after indictment or information except on written statement of prosecutor, giving reasons; Court may refuse to dismiss or order further investigation, and may appoint special prosecutor.

APPEALS IN CRIMINAL CASES

A prominent practitioner in the northern part of the state, in a private letter to the Secretary, expressed himself with such force and clearness in regard to the recommendations of the Missouri Survey Committee (published last month) that his remarks are printed, notwithstanding the designated private nature of the communication. They relate to the portion of the report which advocated no reversal except when it appeared that there had been a miscarriage of justice, and are, in part, as follows:

"It would appear to me that if competent testimony offered by defendant is ruled out and incompetent testimony admitted and the jury misdirected on questions of law that, manifestly, there has been a miscarriage of justice. In other words, that the defendant has been deprived of a legal trial before a jury. If the appellate court is allowed to guess what the jury would have done if they had had before them competent testimony that was ruled out and had been properly instructed on the law of the case, the conviction rests not on the verdict of a jury but on pure guess of the members of the appellate court. A jury trial means, if it means anything, a trial before a jury free from erroneous