

Preface

ALTHOUGH my major interests lie in an aspect of the law somewhat remote from criminal law, I have nevertheless long urged that the State or community assume the risks of official wrongdoing and error instead of permitting the losses resulting from such fault or mistake to be borne by the injured individual alone. Among the most shocking of such injuries and most glaring of injustices are erroneous criminal convictions of innocent people. The State must necessarily prosecute persons legitimately suspected of crime; but when it is discovered after conviction that the wrong man was condemned, the least the State can do to right this essentially irreparable injury is to reimburse the innocent victim, by an appropriate indemnity, for the loss and damage suffered. European countries have long recognized that such indemnity is a public obligation. Federal and state governments in the United States ought to adopt the same policy, instead of merely releasing the innocent prisoner from custody by pardoning him for a crime he never committed and without any admission of error or public vindication of his character.

A district attorney in Worcester County, Massachusetts, a few years ago is reported to have said: "Innocent men are never convicted. Don't worry about it, it never happens in the world. It is a physical impossibility." The present collection of sixty-five cases, which have been selected from a much larger number, is a refutation of this supposition. Inasmuch as the conditions described are of interest primarily to the American public, American cases, mainly from the twentieth century, have, for the most part,¹ been chosen for publication. Fifty cases, by reason of their importance or some striking characteristic, have been used as principal cases; the other fifteen, more concisely reported, follow thereafter. Together, they present an interesting cross section of American life. They come from all sections of the country and, by states, may be grouped as follows: California, 8; New York, 8; Massachusetts, 7; Illinois, 4; Ala-

¹ There are three English cases.

bama, Minnesota, and Mississippi, 3 each; Georgia, Michigan, Missouri, New Jersey, Ohio, and West Virginia, 2 each; Arkansas, District of Columbia, Florida, Indiana, Iowa, Kentucky, Maine, Maryland, Oklahoma, Pennsylvania, Texas, Vermont, Virginia, and Wisconsin, 1 each; England, 3. Statistically they embrace the following charged crimes: murder, 29; robbery, swindling, or larceny, 23; forgery or counterfeiting, 5; criminal assault, 4; writing of obscene letters, 2; accepting a bribe, 1; and prostitution, 1.

In the cases chosen for inclusion, the innocence was established in various ways: by the turning up alive of the alleged "murdered" person; by the subsequent conviction of the real culprit; by the discovery of new evidence demonstrating in a new trial or to the Governor or President, as the basis for a pardon, that the wrong man was convicted. There are, in practice, many cases in which pardons are granted without indication or admission of an erroneous conviction—although it seems fairly evident that the prisoner was actually innocent—presumably in order to save the prestige of prosecuting officials or for some other reason. Such cases could not be used for this collection.

The sixty-five cases, although susceptible of dramatic presentation, are set forth in simple narrative form to indicate how the error occurred and how it was later discovered and unraveled. The causes of the error are, in the main, mistaken identification, circumstantial evidence (from which erroneous inferences are drawn), or perjury, or some combination of these factors. Inasmuch as the cases reported constitute a representative group, I have ventured to draw from them certain conclusions indicating the necessity for reforms in criminal procedure. These I have endeavored to present in an introductory chapter, with reference to the cases reported. In a final chapter I have undertaken a somewhat technical analysis, as a basis for American legislation, of the statutes of European countries providing indemnity for wrongfully convicted and arrested persons, and have suggested a draft statute for use in the United States.

The cases were taken somewhat at random, for cases of

this type are not systematically reported. The research was usually begun from a clue often afforded by a governor's pardon, by the report of a trial, or by a newspaper item, and was then pursued by an examination of the record and by correspondence or interview with the attorneys for the prosecution and defense and sometimes with the presiding judge, governor, or pardon board. An earnest effort has been made to present an accurate account of the facts; after each case will be found a bibliography of the principal sources employed and of the persons to whom special acknowledgments are due.

Aside from this indebtedness in particular cases, there are numerous individuals without whose generous aid this collection would not have been possible. First of all, I desire to express to Mr. E. Russell Lutz of Washington, D.C., my former student and collaborator, the deepest appreciation for his painstaking and indefatigable research in many of the principal cases reported. To Mr. Chalmers Hutchison of Fort Worth, Texas, a special debt has been incurred for his personal investigations in Massachusetts, New York, and other states. Mr. Robert Horton of Washington, D.C., was helpful in revising several of the narratives. Mr. George A. Benedict, Deputy Public Defender of Los Angeles, was extraordinarily considerate in furnishing detailed information in a number of California cases and in revising the drafts. Mr. Bert Wentworth, handwriting expert of Dover, New Hampshire, was generous in making available his file of newspaper clippings, which furnished a lead for several of the most striking cases in the book. Mr. James A. Finch, Pardon Attorney of the Department of Justice, was gracious in granting access, under departmental regulations, to the files of the Department in the Federal cases reported. Mr. Douglas Arant of the Alabama Bar was of exceptional assistance in securing information and facilitating contacts in the Alabama and Mississippi cases. Mrs. Mildred Maddox Lutz gave important aid on several cases. I cannot refrain, moreover, from expressing my immeasurable gratitude to the many district attorneys, police officials, defense attorneys, and other public-spirited citizens to whom ac-

knowledge is given in each individual case, and who, without any other thought than the service of truth and justice, gave so unstintingly of their time and effort in uncovering elusive facts. To the Institute of Human Relations, Yale University, special thanks are due for an appropriation which enabled the investigation to be completed; and to Messrs. Davidson, Donaldson, and Rollins of the Yale University Press, for valuable editorial advice.

Finally, a word of explanation of the dedication: Professor John H. Wigmore of Northwestern University first displayed his unremitting interest in this subject some twenty years ago by writing an introduction to an article, reprinted as Senate Document 974, Sixty-second Congress, third session, entitled, *State Indemnity for Errors of Criminal Justice*. To the persuasion of Professor Felix Frankfurter of Harvard University I owe my willingness to suspend my preoccupation with other interests and to devote the necessary time to the completion of this undertaking. Both Messrs. Wigmore and Frankfurter have distinguished themselves as American leaders in the reform of legal procedure and have made special contributions to the present subject.

E. M. B.

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