

WHEN JUSTICE MISCARRIES

The case of Bertram M. Campbell, who was wrongly convicted of forgery and subsequently served more than three years in Sing Sing for an offense of which he was absolutely innocent, raises two questions: first, what can be done to recompense Mr. Campbell for this ghastly mistake; second, what can be done to prevent such miscarriages of justice in the future? Of course, full reparation cannot be made. Mere dollars cannot repay the damage done to this upright man's life. He can be, and doubtless will be, "pardoned." But "pardon" in the criminal law is an ambiguous concept. Strictly speaking, it is "not a matter of right but of grace," and hence does not establish innocence. Strictly speaking, the remedy for an erroneous conviction is an appeal to a higher court. Yet the rules governing applications for pardon explicitly declare that "except upon proof of absolute innocence persons confined are seldom pardoned outright." Thus a pardon is not necessarily a remedy. In the present case Governor Dewey could doubtless so frame it that the State would be asking Mr. Campbell's pardon rather than granting him its pardon. Mr. Campbell may also be able to recover some part of his monetary loss, though he can't have his lost years back, nor can any act of right or grace undo the suffering he and his family underwent.

The problem of preventing such injustices strikes deep into criminal law, court practice and legal traditions. No one supposes that court, prosecutor, witnesses or jury wished to convict an innocent man. At the same time the cards were stacked against Mr. Campbell. He lacked good legal advice. He lacked money to push an appeal. Anyone familiar with the personnel of the New York bar could think of quite a number of lawyers practicing in 1938 who could almost surely have gotten Mr. Campbell acquitted. He wasn't able to hire one of them. The battle between prosecution and defense was uneven. Mr. Robert Daru, who has undertaken to look into the case for the New York County Criminal Courts Bar Association, may be able to recommend changes in procedure which will prevent such situations. Certainly the best monument we can erect to Mr. Campbell's lost years, after he has been pardoned and in some slight degree recompensed, will be to re-emphasize in our criminal courts the sound old principle that a man is presumed innocent until proven guilty, and that if a choice has to be made it is better that the guilty should escape than that the innocent should be martyred.