

IV

THE DEFENSE OF POOR PERSONS ACCUSED OF CRIME IN CHICAGO

The defense in our criminal courts of a person accused of crime financially unable to employ an attorney, is intrusted to a lawyer appointed by the judge before whom the prisoner is arraigned for indictment. At a recent arraignment of twenty-seven persons, after indictment in the Criminal Court, fourteen asked the court to appoint attorneys to defend them, as they were unable to employ lawyers themselves. Twelve had engaged counsel and one asked that he be allowed to plead his own case. The judge made his selections from the list of lawyers who handed in their business cards to him, thus indicating that they were willing to accept an appointment. The attorneys volunteering for this service are, as a rule, either young, inexperienced lawyers, who wish in this way to gain experience in the handling of criminal cases, or criminal lawyers of only mediocre ability.

The attorney assigned by the court receives no compensation for his services and there is therefore little incentive for him to properly prepare the case for trial. The Bar Association is commenting on the present system and says in its report for 1913, "defense under our present system of appointment is inadequate, particularly because of the lack of preparation. Counsel so appointed usually has no time to make adequate preparation, and possibly has no inclination to do it. Preparation as to the law of the case does not matter so much, but preparation getting facts is extremely important. The court may try to exercise special diligence in securing precise justice for defendants unable to employ counsel, but he is more or less helpless unless all the facts can be presented." In cases where the accused is financially unable to employ counsel the situation is made more serious by the fact that the accused is ordinarily confined in jail, being, of course, unable to furnish bail, and is therefore unable to help in the preparation of his own case. He furthermore has no means to employ any one to gather the necessary facts in the case so that his attorney may present his side of the case to the jury. The public defender of Los Angeles, in speaking of the need of proper preparation for the poor person confined in jail awaiting trial in the criminal courts, said, "probably the class of cases that calls for the service of the public defender most is that class where it is necessary to do some investigating to verify the stories of the accused and to find witnesses in his or their behalf. Often a defendant, upon asserting his innocence, will give the names of witnesses who might testify to facts tending to substantiate his contention. If no means are provided for making investigation, or for examining witnesses for him, and if the attorney appointed by the court and working without pay does not care to do this work, the accused will be left without proper representation and all the facts will not be brought to the attention of the jury." The position of the accused should be contrasted with the facilities furnished the prosecution by the state, or with the protection the accused would have from the law if he were able, as a matter of dollars and cents, to remain out of jail until he was actually found guilty and to provide himself with able counsel so that the facts and law favorable to him could also be put before the jury for consideration.

The practice now in vogue of assigning attorneys to defend prisoners without compensation, also places a premium upon the entry of a plea of guilty by the attorney so as to avoid the trouble and loss of time incidental to the trying of the case. This was illustrated in a case tried in the East Chicago Avenue branch of the Municipal Court, at which the writer was present. A young man on trial for larceny who was without funds asked the judge to appoint an attorney to defend him. The attorney assigned to the case, who happened to be in the courtroom on another matter at the time, consulted with the prisoner for less than five minutes and then asked the court to enter a plea of guilty to a less serious offense which did not require that the case be tried in the Criminal Court. The judge then sentenced the young man to a year in the Bridewell. It was apparent to the on-looker that the attorney had little opportunity to go into the details of such a serious

case in such a short time as the attorney devoted to the matter, and the prisoner did not have full opportunity to present his case with proper legal advice. Lawyers acquainted with Criminal Court practice are of the opinion that guilty pleas are often entered after but little attention to the case by the attorneys with the view of getting through with the unprofitable case as soon as possible.

The present method of assigning unpaid counsel to the defense of prisoners, besides frequently resulting in inadequate defense of the accused persons because of the inexperience of counsel, or his inability or disinclination to give the same attention to the case as to that of a private client, frequently gives an unscrupulous attorney an opportunity to exploit the friends or family of the prisoner. Attorneys assigned by the court, after investigating the resources of the prisoner's family or friends, may, if they find it worth while, bring pressure to bear upon them so as to secure a fee for their legal services. This is frequently done by continuing the case at the request of the attorney on the plea that he is gathering evidence for the defense and the accused is kept in jail awaiting trial an unusually long period until the fee is forthcoming from the prisoner's friends.

The need for an improvement in the practice of the defense of persons accused of crime is not measured only by the number of cases in which the judge assigns counsel because the prisoner has prior to his arraignment been unable to employ one. Unscrupulous lawyers, either through arrangements with professional bondsmen, or by taking advantage of the serious position in which a poor person accused of crime and ignorant of the workings of our judicial machinery finds himself, have taken advantage of the situation to exploit the prisoners or their friends. The prisoner is frequently forced to pay fees incommensurate with the services rendered and his family is put to very heavy expense, which in many cases proves a serious financial burden, in order to provide adequate defense. Instances are on record where attorneys of this kind have forgotten their clients after the initial fee has been paid, and have paid no further attention to the case, or where they have even suggested the plea of guilty so that their work in connection with the case could be reduced to a minimum.

A number of cases illustrating this system have been collected by social workers of the County Bureau of Public Welfare detailed at the County Jail and are here presented:

John Schmidt, 17 years old, 1543 Clifton Park Avenue, was held to the grand jury on a charge of burglary, after a preliminary hearing in the Boys' Court, August 24, 1914.

His father, Charles Schmidt, stated that Attorney C. D. Bradley came to him at the county jail and offered to take John's case. Mr. Schmidt paid him \$25.00, taking a receipt which he still holds. Later he went to Mr. Bradley's rooms as given on his letterhead, 1214 Ashland Block, but was informed that Mr. Bradley was not located there. I telephoned Central 776 (telephone number given on Mr. Bradley's letterhead) and found it to be the firm of Burres & Wamsley. They informed me that Mr. Bradley had desk room in their office two years ago and a few times since for a day or two, but that he has not any right to use their rooms and telephone number on his letterhead. They have had frequent complaints of him and say he is not to be trusted; that he hangs around Criminal Court most of the time. I have never been able to reach Mr. Bradley at his home telephone, Rogers Park 5273.

Julius Kerhove, cell 625, county jail, told his attorney that he paid an Italian bondsman, 1837 W. Van Buren Street, to secure his release on bond. When he was indicted, his bond was raised and he paid him \$50 more; yet a very short time later his bondsman surrendered him and he is now in jail.

Wm. E. Buckney, 224 N. California Avenue, an attorney, having secured as a client the boy referred to above, suggested to his widowed mother, 62 years of age, living at 146 N. Hermitage Avenue, that she sell her furniture in order to pay him. To this the boy objected and took his case from Mr. Buckner's hands.

Mr. Buckner was counsel for three boys implicated in a robbery—Walter Gulczynski, 1623 W. 17th Street, whose parents live at 2846 S. Throop Street; John Wass, 2815 S. Kolin Avenue, and A. Guzynski, boy whose address I cannot find. He secured about \$50 in all and because he could not get more, quietly told the judge that they were a "bad lot."

These lawyers and bondsmen also take their places in the entrance to the jail; as the relatives and friends of the prisoners come in they engage in conversation with them. By appearing to show interest and sympathy for the ones in trouble they get at the financial situation in the family, which aids them in deciding whether the case is worth going after or not.

It is obvious that the practice of defending poor persons by unpaid counsel has not resulted in giving them an adequate defense, which they are supposed to be given under the law. It is to be expected that a system which penalizes a conscientious attorney who accepts an appointment and which offers no incentive to the attorney handling the case for the faithful performance of his duty would necessarily result in placing a handicap upon the poor person in securing justice in the Criminal Court. Certain measures have been taken under private auspices to meet this situation in this city. The Bar Association sent out a circular in 1913 to those of its members who were acquainted with criminal practice asking them to volunteer to act as counsel when a person too poor to pay an attorney was arraigned in court. About 35 members of the association responded to this letter and volunteered their services in one or more cases and the chief justice of the Criminal Court made assignments off this list until it was exhausted. The results obtained under this system were very much better than under the usual plan of assigning an attorney in the ordinary manner, but the success of this plan depends solely upon the co-operation of public-spirited lawyers who are willing to give their time and ability to this kind of charitable service.

The Legal Aid Society has also done some work along this line. It is represented by an attorney stationed in the Boys' Court, who presents the law and facts from the point of view of the defendant and advises others coming into this court as to their legal rights and co-operates with the court and the probation officer in the handling of cases. During the period this attorney has been in the Boys' Court, approximately 75 boys have been defended by the attorney each month. When cases are transferred from this court to the Criminal Court the representative of the Legal Aid Society makes arrangements for an attorney, if that is necessary under the circumstances. I have been informed, also, that the facts gathered by this lawyer in the preliminary investigation of the case have in many instances been helpful to the judge in settling the case and to the other administrative agencies, such as probation officers, in following up the case after decision has been made. The experience in this court has been that preliminary investigations of this kind, conducted so as to give a fair trial to the defendant, are very helpful to the court and to the probation officers in making proper disposal of the case.

The County of Los Angeles has, under new charter of 1913, put on efficient basis the defense of poor persons in the courts through the creation of the position of Public Defender. Under the provisions of the Los Angeles law the public defender represents every person accused of any offense in the Superior Court (analogous to our Criminal Court) who is financially unable to employ an attorney, upon the request of the prisoner or upon order of the court; prosecutes appeals in proper cases; and, on the civil side, handles cases, where the claim does not exceed \$100, for poor people. In the civil cases the office of the public defender may represent either the plaintiff or the defendant. No provision is made, under the present law, for the appearance of the public defender in the police courts. A volunteer defender is now at work in the police courts and an amendment extending the jurisdiction of the defender to these courts is recommended by those who are acquainted with the work of the public defender in the higher courts. The public defender and his deputies are appointed from a civil service eligible list after examination.

Walton J. Woods, Public Defender of Los Angeles, says in regard to the work of his office:

"In Los Angeles the district attorney and the public defender are working harmoniously together. We are doing what the district attorney tried to do in many cases but which, on account of conditions which could not be overcome, he was unable to do. We are daily advising the accused of their rights. We are informing them of the law covering the crime of which they may be charged. We are listening to their side of the story and are bringing out whatever points there may be in favor of the defendants, at the same time doing nothing to hamper or delay the administration of justice. Many of our

clients come by recommendation from the office of the district attorney, others come from officials at the county jail and others at the request of the judges.

"I call attention to the statement in the letter of Judge Willis that our office 'has been a great saving to the county in the matter of expense.' This is a very remarkable statement, yet I believe it is absolutely true. We have had a number of cases dismissed by talking frankly with the district attorney and showing him that a trial would result in acquittal. He has, in such cases, dismissed the prosecution. In other cases we have been able to avoid delays, and by having attorneys who are familiar with criminal procedure in court at all times, the court has been able to dispatch business much more rapidly. In the matter of expense the same condition to some extent prevails in the civil department of our work, where we relieve the courts of many congested cases by adjusting them without filing suit."

The appointment of a public defender in Chicago, with powers and duties in the Criminal Courts, similar to the public defender of Los Angeles, has been endorsed by Chief Justice Kersten of the Criminal Court, Chief Justice Olson of the Municipal Court, Dean Wigmore and others, to whom the question has been presented. It would be the function of the public defender to defend and give legal advice and assistance to all persons who are held to the Criminal Court and who are unable to hire counsel. The existence of such official in Chicago would provide an efficient and adequate means of defense for indigent persons accused of crime and should lessen considerably the "shyster" lawyer business in connection with our Criminal Courts. Some provision should also be made to assist prisoners in the police courts in bringing out their side of the story to the court. The procedure in the Municipal Courts is not as technical as in the Criminal Court and the need of a legal adviser for defendants is not so apparent. If lawyers are not assigned to these courts, arrangements should be made for the appointment of investigators who can gather the facts in regard to cases so that substantial justice for the defendant may be secured. The precedent established at Los Angeles in selecting the public defender and his assistants on a civil service basis should be followed.