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## Public Defender

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## PUBLIC DEFENDER.

MAYER C. GOLDMAN.<sup>1</sup>

Having initiated the present movement to bring about the establishment of a Public Defender in the State of New York, and being the author of the Public Defender Bills introduced in the New York Legislature of 1915, as well as of the proposed Constitutional Amendment of 1915, I wish to take exception to certain arguments urged by Mr. Henry A. Forster, in opposition to the Public Defender idea, which are set forth in the September number of this JOURNAL.

Mr. Forster asks: "Is it expedient to champion at the public expense every redhanded malefactor, every professional criminal, as well as every violator of the City ordinances, the sanitary code, the building code and the tenement house law?"

Mr. Forster evidently overlooks the very important theory that under our system of criminal jurisprudence, a person is presumed to be innocent until he is proven guilty. In this connection it may be proper to state that a Public Defender will not be required to defend all accused persons, but only those who request his services. It is fair to assume that many accused persons (particularly "red-handed malefactors") will prefer to retain private counsel for reasons which are perfectly obvious.

While Mr. Forster fears the effect of the establishment of "a statutory Public Defender on the Los Angeles model," the fact is that the Public Defender's office in Los Angeles has been so successfully administered in the interest of justice for nearly two years past, as evidenced by the strong endorsements of the local District Attorney, Judges and press, that legislation seems assured in the near future, which will provide Public Defenders throughout the State of California. It is equally true that in the other communities where the Public Defender experiment has been tried, it has received the most enthusiastic approval.

The suggestion so often made, that in Los Angeles and in other Western communities conditions are different from those existing in the East, is not sound, because our criminal laws are in general the same throughout the country and human nature is quite the same everywhere.

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<sup>1</sup>Member of the New York City Bar.

Mr. Forster quotes various statistics, as well as the opinions of Ex-President Taft, Josiah Strong, Moorfield Storey and others, in an effort to prove that murders and other felonies are on the increase in the United States in marked contrast with conditions existing in foreign countries. This information, while no doubt interesting on the question of criminal statistics, throws no light whatever on the Public Defender question one way or the other and, in fact, is wholly apart from it. If it should be seriously contended that crimes and criminals would be increased by the establishment of a Public Defender, such contention must necessarily fall of its own weakness. A Public Defender will no more increase crime than capital punishment will decrease murder. It must be borne in mind that the "startling increase in the number of murders and homicides as compared with the number of executions" (referred to by Mr. Forster) has taken place during a period when such an official as a Public Defender did not exist in this country. Certainly a sworn public official having a definite duty both to the State and to his client would not contribute to any such extraordinary result. Mr. Forster quite overlooks the fact that the function of a Public Defender is not to seek through technicalities, or otherwise to acquit a guilty defendant any more than it is the function of a District Attorney to convict an innocent defendant. The true function of a Public Defender is to safeguard and protect the rights of accused persons who, for one reason or another, are unable adequately to protect themselves.

The suggestion, which has often been made, that Legal Aid societies in various communities afford a sufficient substitute for and render unnecessary the establishment of Public Defenders, is wholly without merit. First, Legal Aid societies are generally handicapped by lack of sufficient funds as has been evidenced by their frequent appeals to the public for financial support. Aside from this, however, I maintain that no form of charity whether individual or corporate, is a proper substitute for the denial of a legal right to which an accused person is entitled under our laws, viz: the right to an adequate defense by competent counsel. If the State owes a duty to protect the rights of an accused person, such person should not be dependent upon the favor of a charitable organization, but rather he should be defended by a public official charged with a definite legal duty to present a proper defense.

The Public Defender idea contemplates a "square deal" to all classes of accused persons in our courts. It further contemplates that so long as the presumption of innocence attaches to an accused

person, he should have ample opportunity and resources properly to present his case to the court and jury.

According to Mr. Forster's viewpoint, this essentially fair and humane movement to bring about an equality in our courts between rich and poor defendants is fraught with danger to our institutions; there will be an exclusive Trial Bar to try all cases and our whole system of jurisprudence will be turned topsy-turvy. This pessimistic viewpoint, however, is not justified in theory, nor does it possess any merit in the light of practical experience.

Instead of being a new, radical and revolutionary idea (as some of its opponents assert it to be) the Public Defender has been recognized for centuries by older civilizations and imbedded in their jurisprudence.

The proposition of making our theory of "Equality before the law" a reality is worthy of the serious thought and enthusiastic support of all persons who seek a higher ideal in the administration of justice.