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Correspondence

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CORRESPONDENCE

SHOULD LAWYERS BE ABOLISHED FROM COURT.

Some Comments on Professor Willis's Proposal in the November
JOURNAL.

Jack Cade's method of ushering in the legal millennium—"kill all the lawyers"—always strikes a responsive chord somewhere. Never before, however, have I heard of a law school dean proposing the ruthless slaughter of his own progeny. If this infanticide will cause justice to be administered better than now, then let us be Spartans.

But first we should be sure of our ground. The obvious remedy is not always the effective one. Possibly privately employed lawyers still serve some purpose in court. Amputation of the legal members from the judicial body may leave a badly handicapped cripple to do a whole man's work. Never operate on one man's diagnosis.

Many public spirited lawyers recognize existing evils in practise. Through the American Bar Association and the several State Associations they are giving disinterested service to secure efficient reformation. The proposal of Professor Willis coming from one in his position is somewhat discouraging.

Many of us feel that the evil is not so much the lawyer in court as it is the lawyer out of court. The proposal, however, seems to tend to a situation where most of the real evils will flourish uncontrolled and unreached and the efficiency which comes from private interest and incentive will be lost.

It is said that privately employed attorneys secure injustice for the strong. I am inclined to think the present condition more often is the means of securing adequate justice for the weak. If only publicly paid officials were permitted to represent litigants, no man need look for the energy, perseverance and industry now exerted on behalf of those incapable of properly presenting to a public official their own rights and insisting upon their protection. Public officials are proverbially lazy. Until the millennium dawns when lawyers will be needed no more, we must expect this constitutional inertia to persist.

It is said the partisanship of witnesses is due to attorneys. This statement would hardly be made by one acquainted with active practice and the troubles trial attorneys have in compelling both parties and witnesses to discard partisanship and tell the simple truth.

It is said that when a just judgment does result
"it constitutes the miracle in the administration of justice in the United States and is due largely to the noble work of the judges and to the excellence of the substantive law."

Why then propose codification of the law? Judges are selected from practising lawyers. What alchemy transforms the lawyer when made a judge? One wonders also how lawyers who are so bad can pervert justice as pronounced and enforced by judges who are so good. Surely there must be exaggeration somewhere.

It is said:

"A case should never be remanded. Judges should know the rules of evidence but they should not obtrude them into the court room. A violation of any one of them should not be a reversible error."

While courts may have gone to one extreme in times past, there is danger now of going to the other. Technical reversals are practically a thing of the past. Affirmances in the teeth of prejudicial error, because the appellate court assumes that it probably did no harm, are just as bad.

Assume a case: A defendant on trial for his life offers several of his friends and neighbors as witnesses to a decisive fact, say the much abused alibi. The trial judge arbitrarily rules that alibis are the implements of the devil and are out of date in his court. Shall the man be hanged on verdict of a jury? If not, shall the state be barred the privilege of a proper trial? The illustration is extreme, but where will you draw the line? If law regulates human rights every citizen has a right to a trial with all competent and no incompetent evidence received, and the law correctly stated to the jury. If not given this, justice requires a new trial. If we stray far from this wholesome rule, civil liberty is in danger.

It is said that attorneys now have a monopoly of the administration of justice

"because they have the right to say who shall be admitted to their ranks."

Some of us have been urging the establishment in this country of the English and Canadian system (incidentally it is in vogue in practically every other country) by which the bar shall have greater control not only of the persons but also of the number who shall be admitted to practice. Opposition to such measure can easily appeal to popular prejudice. But if the entire bar were organized into one body, charged with the duty, under court supervision of controlling its membership and their conduct, a remedy for many existing evils would be found. The trouble now is members of the bar cannot efficiently reach transgressors among their number and the courts don't reach out of their own motion. The assertion above quoted is certainly enlightening, if true!

The learned professor summarizes the utopian results likely to result from abolishing all privately paid lawyers from court. If occasionally lawyers succeed in technical defenses the responsibility cannot be shifted entirely from either the courts who render the

judgments or the law schools who certify that the lawyers are of good moral character and of ability to practise.

If our judges are now so wise and capable, the substantive law so nearly perfect and the lawyers so generally disreputable and untrustworthy in practise, one wonders how the dire results mentioned by the professor can now be brought about.

Let us meet the situation fairly. Injustice sometimes results, although in the great majority of judgments justice is done. Delays are sometimes pernicious, but adequate notice of claims and timely deliberation are essential to prevent injustice. The evils resulting from technicality, delay and incompetent representation in court, are rather rapidly being reduced; still there is ground for substantial improvement. The fault rests in no one place. Ultimate responsibility must be shared by judges, law schools, legislatures, lawyers, and in no small measure by the general public itself.

Reformation must come by the joint efforts of all to judge impartially the whole situation instead of treating occasional shortcomings as typical of the general practice. In the mean time we modestly suggest, even though it be a call out of Sodom and Gomorrah, that possibly enough honest and capable lawyers may still be found to justify preserving the bar, renovated though it should be.

CLAIRE B. BIRD, Member of the Bar, Wausau, Wis.

PUBLIC DEFENDER.

New York, February 25, 1916.

Editor, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY:

Sir:

Anent the agitation to establish the office of Public Defender to represent indigent accused persons, it may be of interest to your readers to know the success of the Public Defender's office in Los Angeles County, Cal., has resulted in the recent appointment of a Public Defender for the police courts in Los Angeles.

The office of Public Defender was also created by the City Council of Columbus, Ohio, for the Municipal Court of that City. There are Public Defenders now in the cities of Omaha, Pittsburg, Houston, Temple (Tex.), Portland (Ore.), and Evansville, Ind. Other cities are actively agitating the Public Defender idea. A Public Defender Bill was recently passed by both houses of the Georgia legislature, but apparently has not become a law as yet. A similar bill was recently introduced in the New Jersey Legislature, and bills are likely to be introduced in various other State Legislatures in the near future.

The writer expects to have the Public Defender Bills which he prepared and had introduced at the 1915 session of the New York Legislature, shortly re-introduced.

It is apparent that the soundness of the Public Defender idea is beginning to be recognized throughout the country, and that New York must inevitably declare itself in favor of elevating its administration of the criminal law, so that no injustice may be done to any accused person by reason of his inability to properly defend himself.

Very respectfully yours,

MAYER C. GOLDMAN, (Member of the Bar, N. Y. City.)