

1917

Correspondence

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Recommended Citation

Correspondence, 7 *J. Am. Inst. Crim. L. & Criminology* 591 (May 1916 to March 1917)

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CORRESPONDENCE

ON LEGISLATION FOR STERILIZATION

Dear Sir:

In response to your favor of August 9th concerning the proposed legislative act which I have modeled from the one submitted by Committee "H," I desire to mention just a few reasons which seems to me make it a coming necessity if not an immediate necessity for legislation along the line of sterilization. (For a copy of the proposed act, see page 611, this number.)

I cannot, of course, view the ever increasing physical and mental deformities and defects as does a physician, but as to the moral pervert, criminals and scummy vagabonds, the lawyer should be given a hearing, because he sees as many if not more than does the doctor.

It would make no difference in my judgment if medical skill should fail to prove that the tendency to crime is inheritable; not one criminal out of ten can raise a large family (and their families are most always at large) without each child learning from, and imitating its father; and in all probability surpassing his father in cussedness. Whether he learns it or whether he inherits it from his parent matters nothing; the fact remains that he *has* it.

One thing that leads me to favor sterilization of certain classes, is, that the people of the state and nation are demanding that something be done to check the rapid increase of the insane, feeble-minded and degenerate persons. They watch with alarm the number multiply and in their anxiety to discover a preventative become easy dupes to wild and dangerous theories, a sample of which is to concede the attending physician the privilege of selecting between life and death of an innocent new born.

The people of this country know they need relief and if the brains of the proper departments do not formulate and furnish the correct path to that end, they will stampede the Devils lane in an attempt to get there.

The crime of the age was committed only last winter in Chicago by the negative killing of the Bollinger infant; yet no doubt Dr. Haiselden and half the population of Illinois who praised the horrible torture of this little one fighting for life, dear to it as to the writer, while all the bystanders boosted for death, actually thought they were serving society, instead of staggering it by destroying the conscience of which society is made.

The prosecuting attorney reported he would be unable to punish Dr. Haiselden. Why? It is a crime forbidden our statute to willfully permit a human being to perish. The prosecuting attorney knew that a jury made up of people who were praising Dr. Haiselden would never convict him. Therefore, it became useless to prosecute. The people have not as yet found a right way to prevent the increase of delinquents and it leaves the bars down for quacks and men of ill responsibilities to grow famous through the pleasant process of bulldozing.

No one man has a right to consult his own feelings and decide who shall continue to live and who shall die. When kings had this power the doctors were the rain-makers, shaking bean bags at the moon and chanting hocus-pocus to the evil spirits. Their progress in the last century is a marvel of achievements almost beyond belief; and every citizen should be ready to aid and encourage them. Help them to rid their profession of the individuals who bring shame upon it, and permit them to rid this race of people of a major per cent of the feeble-minded, inebriate and criminalistic creatures from among the coming generation. Segregation must fail; eugenic marriage laws is only the first step; sterilization will make itself felt for the great good of the race, and when people learn to understand it, it will meet with their favor.

Thanking you for the opportunity afforded me for expressing my personal views upon the above subject, I remain,

Very respectfully yours,

W. F. GRAY,
Clinton, Ill., August 15, 1916.

THE PUBLIC DEFENDER: DUTY TO FURNISH TECHNICAL DEFENSE

In answer to those who advocate a Public Defender, obviously in imitation of Los Angeles, the writer begs to ask:

Has any other nation constitutional provisions, which the courts of last resort characterize as "a shelter to the guilty," which "has no place in the jurisprudence of civilized and free countries outside the domain of the common law, and is nowhere observed among our own people in the search for truth outside the administration of the law" (*Twining v. New Jersey*, 211 U. S. 91, 113), or as "the privilege of crime" (*State v. Kentworth*, 65 Maine, 241)?

Ex-President William H. Taft, in his address before the Civic Forum of New York City on April 28, 1908, said (p. 15):

"And now, what has been the result of the lax administration of criminal law in this country? Criminal statistics are exceedingly difficult to obtain. The number of homicides one can note from the daily newspapers, the number of lynchings and the number of executions, but the number of indictments, trials, convictions, acquittals, or mis-trials it is hard to find. Since 1885 in the United States there have been 131,951 murders and homicides, and there have been 2,286 executions. In 1885 the number of murders was 1,808. In 1904 it had increased to 8,482. The number of executions in 1885 was 103. In 1904 it was 116. This startling increase in the number of murders and homicides as compared with the number of executions tells the story. As murder is on the increase, so are all offenses of the felony class, and there can be no doubt that they will continue to increase unless the criminal laws are enforced with more certainty, more uniformity, more severity than they now are."

The criminal statistics referred to by Ex-President Taft are those computed by the late Josiah Strong upon the basis of what the Chicago Tribune has published on the last day of each year since 1885 showing the number of homicides and executions in the United States for each year.

The Chicago Tribune gives the number of homicides (including manslaughters) in the United States in 1912 at 9,153; the number of executions in 1912 at 145; it gives the number of homicides (including manslaughters) in 1913 as 8,902; the number of executions in 1913 as 88; it gives the number of homicides (and manslaughters) in 1914 as 8,251; the number of executions in 1914 (including 3 for another felony) as 74; it gives the number of homicides (and manslaughters) in 1915 at 9,230; the number of executions in 1915 (including 8 for another felony) as 119.

According to the Judicial Statistics, England and Wales, 1913 (Part 1 Criminal Statistics, pp. 18, 26) there were reported to the police of England and Wales during the year 1913, 111 murders of persons aged more than one year and 67 murders of infants of one year or less. On these 178 reported English and Welsh murders, 67 persons were brought to trial for murder; there were 28 convictions and death sentences; 16 executions; 12 commutations to penal servitude for life; 5 accused were found insane on arraignment; 17 were found guilty but insane and 17 were acquitted.

In 1913, 154 manslaughters were reported to the English and

Welsh police (p. 18), on which 136 persons were brought to trial, on which trials there were 63 convictions and sentences (p. 26).

In 1914 the number of murders and manslaughters reported to the police of England and Wales is not given; 55 persons were brought to trial for murder; 23 were convicted of murder and sentenced to death; 14 were executed; the sentences of 8 were commuted to penal servitude for life; thirteen were found guilty but insane; 12 by jury and one by court of Criminal Appeal.

In 1914, 117 were brought to trial in England and Wales for manslaughter, of which 48 were convicted and sentenced. (Judicial Statistics, England and Wales, 1914, Part I, Criminal Statistics, p. 12.)

Moorfield Storey (Reform of Legal Procedure 196) quoting Andrew D. White, says:

"The murder rate in the United States is from ten to twenty times greater than the murder rate of the British Empire and other northwestern European countries."

The World Almanac for 1911, 1912 and 1913, under "Statistics of Homicide," says convictions in Germany equalled 95% and a fraction; in the United States 1.3%.

Frederick L. Hoffman, Life Insurance Statistician of Newark, New Jersey, says ("Homicide Record of American Cities," Spectator, October 22, 1914, p. 216):

"The position of the United States in the Matter of violent deaths is decidedly deplorable. Every international comparison proves that the homicide rate of the United States is probably the highest of any civilized country in the world."

In Australia, Canada and Great Britain where the criminal procedure approved by the Federal Supreme Court in the Twining case prevails, the sweat box and third degree are unheard of and unknown. The third degree is an extra legal imitation of Continental European Police methods.

If public defense in criminal cases should (contrary to the practice of European nations) be made a matter of absolute legal right, it would be the duty of such Public Defender to give every red handed murderer, professional criminal, as well as every one charged with any crime, misdemeanor or ordinance violation a strenuous and technical defense and avail himself of any possible technicality to defeat the people's representative, the District Attorney, who is now a quasi judicial officer.

Yours truly,

HENRY A. FORSTER,
New York, October 9, 1916.

UNEXPECTED RESULTS FROM THE ESTABLISHMENT OF THE OFFICE OF PUBLIC DEFENDER.

When I took office as public defender of Los Angeles County in January, 1914, I did not realize many of the beneficial results which would follow the establishment of the office. It was the common idea that a public defender should be appointed for the purposes of safeguarding the innocent poor from unjust convictions and at the same time of adequately remunerating the attorneys conducting the defense in criminal cases. The method of the work was experimental, not the work itself. The law had always provided for the assignment of counsel to the defense of poor persons accused of crime. The creation of the office of public defender was meant to put the defense of these persons upon an efficient basis by providing competent counsel and holding him responsible for the proper conduct of the cases.

While the results mentioned have been brought about, the experience of the office in Los Angeles has shown that a number of unexpected results have followed. Important among these is the elimination of the attorneys of low standing who made a practice of preying upon the unfortunates within the prison walls. It was generally understood that the public defender would take the place of the youthful attorneys who were seeking to gain experience by receiving appointments from the court to defend. While it is true that in a number of instances young men commencing the practice of law were called upon by the judges to defend the accused, the majority of the indigents were represented by the members of the profession who made a business of soliciting by any method which they could adopt. These lawyers were of the lowest standing at the bar. It is difficult to apply to them a name that fits properly. I recently read an article by a Chicago lawyer who referred to such lawyers as "human harpies." They infest the jails and criminal courts of all large cities. They use various methods of obtaining clients, one of the most common being to operate through an interpreter. Many of the indigent defendants are foreigners who are unable to speak our language. Interpreters have made alliances with the attorneys and have been the means of the employment of the "human harpies" in many instances. Another method frequently used is that of paying a commission to the prisoners in the jail to recommend them to the other prisoners. If the attorney could make a working agreement with one of the prisoners to send others to him he could secure a number of clients through the efforts of his agent in the prison. Many of the prisoners upon their arrival

at the jail are not acquainted with the name of any attorney with whom they can communicate and are glad to obtain a recommendation from some of the prisoners who already have engaged counsel. At other times arresting officers have tried to "steer" business to certain attorneys.

One case was called to my attention in which a prisoner had been arrested and taken to the city jail, where his personal effects were taken in charge by the officials. Later he was transferred to the county jail but his belongings were left behind. He engaged one of the attorneys of the class I am discussing and instructed the attorney to bring his clothes from the city jail to the county jail. The attorney later appeared wearing a shirt taken from the limited wardrobe of the prisoner. In another case a prisoner had committed a minor offense and had applied to the public defender for assistance. One of the attorneys in our office had secured a letter recommending leniency for the prisoner upon his plea of guilty. An attorney who had a representative among the prisoners heard of this, immediately sought an interview with the defendant and told him that he could secure the letter in question upon the payment of the sum of one hundred dollars. Although the defendant told him that he was without funds the attorney suggested that a promissory note would be acceptable. The note was given for one hundred dollars and the attorney then applied to the deputy from our office for the letter, stating that he had been engaged as attorney. Our office declined to deliver the letter without investigation and upon learning the real facts, insisted that the attorney retire from the case and return the promissory note. This was done and our office holds the promissory note given in that case among our files.

A common method for these "harpies" to pursue was to seek interviews with the prisoners, extolling their own alleged abilities as criminal lawyers and volunteering to render "services" without remuneration. Their next step was to inform the accused that they would require names of intimate friends and relatives for the purpose of establishing good records to be taken into consideration by the court. I have known of cases where defendants have furnished such a list with the instruction to attorneys that the list was not to be used for any other purpose and by all means funds should not be sought from the persons named in the list. The attorneys, however, at once sent out letters to the addresses given, asking contributions of funds for the purpose of conducting a defense and securing the release of the prisoners. When the attorneys found that no funds could be se-

cured, or if the funds obtained seemed inadequate, they withdrew from the cases, advising the accused to secure the services of the public defender. These attorneys are not equipped, either as a matter of integrity or ability, to represent the accused properly.

The "business" heretofore conducted by the lawyers under discussion has decreased to such an extent that it is nearly eliminated. It is due that I should say that the officials in charge of the jail have endeavored to discourage the work of the "harpies" and have assisted the public defender in his work wherever possible. Nor should criticism be directed at the courts for making appointments from others than the leaders of the bar. When a person appears for arraignment the judge cannot adjourn court and search through the directories to call in some particular attorney. It is the universal custom to appoint attorneys to defend the accused from those who are in court at the time of arraignment.

Another unexpected result from the establishment of the office of public defender is the reduction of expense to the taxpayers. It was not considered that money would actually be saved. It was thought that the new office would, of course, add some expense but that was considered only fair to the accused and to the attorneys who were called upon to devote their services to aid the court in arriving at the truth in the trials of the cases. A careful calculation has been made of the time actually consumed in handling the cases conducted by the public defender and those conducted by attorneys in private practice during the same period. The figures show that the defendants tried by the public defender occupied an average of one day for each trial. Cases tried by attorneys in private practice occupied an average of 1.6 days for each trial. Pleas of guilty were entered in 70 per cent of the cases handled by the public defender and in only 48.6 per cent of the cases handled by attorneys in private practice. The saving of the courts' time in those two items alone has more than offset the expense incurred in maintaining the criminal department of the public defender's office. To this saving should be added the saving in the time of the courts in passing upon demurrers, motions for new trials and such matters. While the public defender's office appeared in about one-third of all the criminal cases handled by the Superior Court during the calendar year 1914, demurrers were introduced in only two cases and both were sustained. During the same period attorneys in private practice filed forty demurrers and only two were sustained. The public defender appealed in three cases while attorneys in private practice appealed in 27 cases. During the calendar year 1915, the

public defender appealed in only one case. I have not computed the number of appeals taken during 1915 by attorneys in private practice.

The public defender's office has demonstrated that criminal cases can be conducted upon purely ethical lines and with the sole purpose in view to promote justice. It is generally believed that the purpose of the defense in most criminal cases is to get the prisoner released by any means possible. The practice of criminal law has to some extent come into ill repute and in a measure the popular idea is justified. Most cordial and harmonious relations have been established between the officers of the district attorney and the public defender of Los Angeles County. Both offices are trying to bring about the same result—the administration of justice. No unfair advantage is taken by one office of the other and trials are conducted with the smallest possible degree of friction. At the same time, both offices diligently and earnestly represent the interests of their respective sides of the issues involved.

In two murder cases the district attorney and the public defender united in asking the court to appoint disinterested alienists to examine the accused for the purpose of passing upon the question of alleged insanity and to serve as the only expert witnesses in the case. The result in both cases was entirely satisfactory, the experts declaring the defendant sane in one of the cases, that of *People vs. Walden*, but characterizing him as an imbecile. In the other case, that of *People vs. Alvarado*, the experts declared the defendant insane and he was sent to the proper institution. In the case of *People vs. Collins*, also a murder case, the question was whether the defendant should be hung or sentenced to life imprisonment. The only eye-witness to the killing was a young colored girl living in Arkansas. The defense desired the appearance of this witness, but was without means to provide her transportation to Los Angeles in time for the trial. A request was made of the district attorney for assistance in this matter and the district attorney, in the spirit of fairness, secured transportation for the witness to come to Los Angeles. She arrived in time for the trial and mainly upon her testimony the jury decided in favor of the lesser penalty.

An important part of the work of the public defender's office is the securing of employment for prisoners upon their release from jail. The judges are loath to release men on parole who are without means of securing a livelihood and who, very probably, would become charges on the community or again resort to crime. Our office has endeavored with considerable success to reclaim men who have fallen

and to make them useful citizens. Often the judges order that prisoners be released as soon as the public defender secures employment for them.

It will be of interest to note that the office of public defender has been recently created in a number of cities throughout the Union, among them Portland, Ore.; Omaha, Neb.; Pittsburgh, Pa.; Houston Tex., and Columbus, Ohio. The demand for the office is increasing and I believe that within a short time it will be established in every large community in the United States.

WALTON J. WOOD,
Public Defender of Los Angeles County, Cal.