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New York Public Defender

William Dean Embree

THE NEW YORK "PUBLIC DEFENDER"

WILLIAM DEAN EMBREE.[2]

The Voluntary Defenders' Committee was organized, as its Constitution states, "to employ a staff of attorneys and investigators, who will offer their services to the criminal courts in cases where the law provides for the assignment of counsel to the defendant, who will undertake the voluntary defense of needy and deserving persons accused of crime and who will assist others engaged in like efforts." It began its work on April 1st, 1917, with offices at 57 Centre Street, in a building owned by the city, within three blocks of the Criminal Courts Building and the City Prison. The whole second floor of the building was assigned to the Committee free of charge by the city authorities. The Committee employs a staff of attorneys and investigators, who offer their services to the Criminal Courts in those cases where the law provides for the assignment of counsel. Some member of the office staff speaks one or more of the following named foreign languages: Italian, Yiddish, French, German, Hungarian, Bohemian (Czech), Polish, Russian, Ruthenian (Little Russian), and Slovak. The members of the staff serve on a salary basis and do no other work.

The work of the Committee is confined to cases in the Court of General Sessions (felony cases triable by indictment) in the County of New York, this circumscription of field being made necessary by the limited size of the Committee's staff. Requests from public officials or organizations of high standing, however, have called the Committee's lawyers into a few cases of unusual merit in other courts, with the result that in three months we have handled four cases in Bronx County, two in Kings County, one in Richmond County and

[1]First Quarterly Report of the Voluntary Defenders' Committee of New York City, covering the quarter April-June, 1917.

[2]Chief Counsel for the Voluntary Defenders' Committee, 57 Centre St., N. Y. City. The personnel of the Committee is as follows:

Nathan A. Smyth, Chairman; James Bronson Reynolds, Chairman, Executive Board; Richard M. Hurd, Treasurer; Timothy N. Pfeiffer, Secretary; Mrs. Francis McN. Bacon, Jr.; George Gordon Battle, Mrs. Francis H. Cabot, John Kirkland Clark, George Brokaw Compton, Robert J. Eidlitz, W. H. L. Edwards, William Dean Embree, Samuel H. Fasher, Raymond B. Fosdick, Francis P. Garvan, Alexander M. Hadden, Mrs. Learned Hand, Charles E. Hughes, Jr., S. Walter Kaufmann, Sam A. Lewisohn, Philip J. McCook, Robert McC. Marsh, Stephen H. Philbin, Charles T. Root, Eustace Seligman, Arthur Woods, William Dean Embree, Counsel; Timothy Newell Pfeiffer, Associate Counsel; Mrs. Marion M. Goldman, Director of Investigations.

several cases in the City Magistrates' Courts and the Court of Special Sessions.

The number of second offenders, who are increasing with appalling rapidity, is suggestive and relevant to the need of a public defender in New York. In 1906 in New York County, out of 2,543 convictions under indictments, 648, or 21 per cent., were second offenders. In 1915 out of 3,728 convicted, 1,328, or 35 per cent., were second offenders. Men who have been imprisoned in and have spoken from the Tombs assert, and there is much to support their views, that second offenders are bred by criminal practitioners whose chief aim in defending a case is to get the defendant off at any price. Of the 3,728 persons convicted after indictment for felony in 1915, 2,737 were between 15 and 30 years of age, over 1,000 being between 15 and 20.

In the fall of 1914 the Association of the Bar of the City of New York and the New York County Lawyers' Association appointed committees to report upon the necessity and advisability of creating the office of public defender in New York City. After a thorough investigation, in which the opinions of lawyers and public officers throughout the State were gathered, each committee reported emphatically against the public defender as a public official. Both committees expressed the opinion that the field examined was one which merited the activities of private philanthropy. Following the judgment of these two committees, the Voluntary Defenders' Committee was formed, and funds were obtained to give the experiment a three years' test, leaving the future form of this work to be determined on the sound basis of experience.

During the three months that the work of the Committee has been under way, the staff has handled 182 cases; that is, at the rate of approximately seven hundred and fifty a year. This is considerably more than it was thought could be cared for in the first year. In addition, six pardon cases have been investigated, and applications for legal aid of various kinds and from various sources in number upwards of 30 have been examined and the applicants advised and referred to the proper organizations and agencies.

In the 182 cases, the persons involved represented almost every race and creed, and the crimes charged ranged from obtaining employment by means of a false letter to murder in the first degree.

In 115 of these cases, about sixty per cent of the total number, pleas of guilty were entered without trial, but the labor involved in the majority of them was almost equal to that which would have been required had the cases actually come to trial. In many instances the

admission of guilt came only after a most painstaking and careful investigation of the defendant's story and the evidence against him, and sometimes only after the case had been fully prepared for trial and the day of trial had actually arrived; in four cases the defendants pleaded guilty after the trial had begun. In the course of these investigations the real character and condition of the defendant has received attention that has been heretofore unknown in the routine of criminal procedure involving needy persons. At the request of the Committee's counsel eight clients were sent to the psychopathic ward of Bellevue Hospital for observation of mental condition. (Defendants referred to this ward are kept under observation for a period of about ten days and then returned to the court with an opinion by the physician in charge as to the defendant's probable mental condition.) Of this number three were found to be insane, and were dealt with accordingly; one was found to be feeble-minded; and another a victim of chronic alcoholism. Each was sent to an institution especially prepared to deal with the particular defendant. In the case of another who was found to be merely in a highly wrought nervous condition, a commission appointed by the Court, in the course of its investigation, brought out facts which led the District Attorney to discontinue the prosecution, and the young man, a Turkish Jew, was placed in the hands of persons of his own race who agreed to befriend him. The other two were reported probably sane and court proceedings followed in due course.

A number of the investigations have led to evidence of crimes committed by other persons. This evidence has been collected and placed in the hands of the District Attorney or the police authorities.

Leaving out of account four cases in which the defendants pleaded guilty after the trial had begun, only six per cent. of the cases have actually been tried. These cases are interesting, however, in view of the well-nigh *sui generis* position of the Committee's lawyers in their relation to their clients' real welfare on the one hand, and the public interest on the other.

Of the twelve cases actually tried there were eight acquittals and four convictions; of the twelve men who went to trial all asserted their innocence to counsel. Of the eight acquitted, we believed in the innocence of six. Of the four convicted, two were clearly guilty; the evidence against the third was overwhelming, and the evidence against the fourth was not strong, but he had all the subjective evidence of guilt and this did not escape the notice of the jury when the young man testified in his own behalf, so we were informed after-

wards by one of the jurors who brought in the verdict. Of the remaining 55, probably one-third will plead guilty before the day of actual trial arrives. A number will be dismissed on the motion of the District Attorney, when, in preparing the case for trial, he decides that there is not sufficient evidence on which to secure a conviction. The remaining cases will be determined by a jury.

It is the policy of the Committee's lawyers to have their clients on trial take the witness stand and testify in their own behalf unless they decline to do so. Of the twelve who went to trial all were willing to take the witness stand, and eleven did so, counsel taking the responsibility of keeping the twelfth off the stand. He was acquitted, and justly so, but would probably have been convicted if he had taken the witness stand, because of a prison record of twelve years, extending from San Francisco to New York, which the District Attorney was prepared to bring out on cross-examination. The Committee's lawyers have not had to meet the difficult task of actually going to trial with a client who admitted his guilt but demanded a trial. A few have taken this attitude at first, but have subsequently agreed to deal honestly and frankly with counsel and the court.

The work has met with the most cordial co-operation on the part of the judges, the Police Commissioner and the members of the Police Department, the Commissioner of the Department of Correction (the prisons) and the officers of that department, and the District Attorney. The co-operation of the District Attorney has been especially helpful, because, by frequent conferences between the members of the District Attorney's staff and the lawyers for the Committee, the truth in many cases has been quickly arrived at, with the result that in some cases the defendants, who at first asserted their innocence, have admitted their guilt; in others, the District Attorney, on hearing the defendants' stories, has been convinced that all the evidence taken together did not show guilt, and has promptly recommended the discharge of the defendants, to the end that the trial calendars have been reduced, the average sojourn of the defendants in the City Prison (before conviction or release) has been shortened, and the cause of justice promoted generally. The Committee, moreover, has been a veritable clearing house for the many charitable and philanthropic organizations of the city to which clients, discharged or placed on probation, and their families, have been referred.

While it is the aim of the Committee that the rendering of legal service shall be its chief concern, an almost equal emphasis is laid upon the social side of the work. Every case is thoroughly investigated,

not only for facts bearing directly upon the crime charged, but also for facts of family, home, and other environment which may have led up to the defendant's anti-social conduct and consequent arrest. The result of this investigation is of great assistance to the Court in imposing sentence, and when the defendant is discharged or paroled it is indispensable to the work of the Committee in obtaining proper employment and otherwise assisting the client to regain his place in society.

The work of the Committee is at present confined to cases assigned by judges in the Court of General Sessions (felony cases triable by indictment) in the County of New York, as we have said above. This circumscription of field is made necessary by the limited size of the Committee's staff of lawyers and investigators. In our judgment it should continue to be the policy of the Committee, however, to confine its effort to felony cases in the Court of General Sessions until such time as an increased staff can do some of the work in the other courts without leaving undone any portion of the important work in the Court of General Sessions.

The following cases are fairly illustrative of the work done by the Committee's counsel:

Our client and his co-defendant were charged with burglarizing Mrs. X's apartment and stealing a suit of clothes belonging to her son Patrick. They had been arrested on suspicion by a patrolman while carrying a coat and vest on the street. The patrolman with his prisoners and Mrs. X with her complaint arrived at the Police Station simultaneously, and Mrs. X unhesitatingly identified the wearing apparel as Patrick's. Subsequently before the Magistrate and Grand Jury, Michael, another son, was mistakenly subpoenaed, but indictment followed. After a thorough investigation on our part it was ascertained that the owner of the coat and vest was a street "drunk," from whom one of the defendants had pilfered the clothing in order to buy drugs. When we took the real owner to the property room of Police Headquarters wearing the trousers which corresponded to the coat and vest, and when Patrick had been subpoenaed and had testified that the recovered property was not his, the facts were brought to the attention of the Assistant District Attorney, and he immediaely recommended the discharge of one of the defendants and the commitment of the other, to a farm for the cure of drug addicts, on a plea of guilty to an amended indictment charging petty larceny. The true facts in this case might have come to light when the case was reached on the trial calendar six or eight weeks after indictment; the work of

the Committee released one man and disposed of the case of the other in eight days.

A young negro was accused of highway robbery. The evidence against him was overwhelming, for he was near the scene of the crime, he was unemployed, his hat was found close by, he knew the men who he claimed committed the crime and he ran away with these men after its commission. His defense was that he lived in the house in front of which the robbery occurred, that he was leaving to keep an engagement with another colored boy nearby, that he had passed by one of the men robbed, who, being drunk, had snatched the hat off his head thinking the defendant his assailant, and that after a scuffle he (the defendant) became afraid of arrest and ran. Unfortunately he ran in the same direction as the others, and when the patrolman shot his revolver in the air the defendant alone obeyed the order to stop. Improbable as the story sounded at first the Committee's attorneys became convinced of its truth, not only because it was found possible to verify the location of the defendant's lodging house near the scene of the crime, his employment and respectable home in Virginia, but also because of his demeanor throughout the case. The jury, however, convicted him. The Committee's lawyers thereupon gathered for the court evidence of previous good character, obtained a promise of employment and were successful in persuading the judge to suspend sentence; a rare procedure after conviction by a jury's verdict. The defendant is now working in an up-state town and reporting regularly to the probation officer.

A Chilean sailor was charged with burglary. The complainant was the keeper of the boarding house where the defendant lived when in this port. On his way to bed, and while intoxicated, the defendant entered the proprietor's bedroom by mistake and fell over the bed. The proprietor, convinced it was a burglar, attacked the defendant with a sharp instrument and put out his eye. After a brief stay in a city hospital the defendant went to the Seamen's Friends Society and wrote the proprietor demanding damages for the loss of his eye. The reply took the form of a warrant of arrest on a burglary charge. The shrewd wife of the proprietor, scenting trouble, had convinced her husband that the surest way to ward off a damage suit was to cause the arrest of the sailor. We brought these facts to the District Attorney's attention and the defendant was discharged, and this like the other case was disposed of eight days after indictment. Through the courtesy of the Burke Foundation Home in White Plains the sailor

spent three weeks there and, having recuperated, earned enough money to buy a glass eye.

A husband and father had been extradited from New Orleans on a charge of abandoning his minor children and had pleaded guilty of the charge. At the time of sentence his wife pleaded with the judge for a suspension. Western relatives of the man, small tradesmen, had come East for the purpose of taking the entire family back with them and were ready to give immediate employment to the husband, but the delay of a week had practically exhausted their ready cash so that they were unable to furnish the bond which the court required to insure the performance of conditions upon which the court proposed to suspend sentence, i. e., the payment to the County of New York of $218, the amount spent in returning the defendant from New Orleans. The family and relatives pooled all the jewelry upon their persons, pawned it, and brought into court a substantial portion of the sum of money required and convinced the judge of their genuine desire to rehabilitate the family. The court then suspended sentence and the family departed. Two weeks later the wife's brother came into the Committee's office and said that the defendant had again abandoned his family, giving up a $20.00 a week job and leaving them in the relatives' hands. The defendant has not yet been apprehended.

Two former Assistant District Attorneys have tried cases as volunteers for the Committee. In these cases the value of a thorough investigation was demonstrated in a marked degree. In one case the defendant, charged with the crime of assault, when arraigned on the indictment had offered to plead guilty of the crime. Three co-defendants did so plead, and though No. 4 professed his innocence he had scant hope of establishing it, largely because a wealthy corporation was interested in the prosecution. During our preparation of the case for trial, his attitude changed and at the trial he took the stand in his own behalf, and told a clear and convincing story, showing that at the time of the commission of the crime he was not with the co-defendants or acting with them. Skillful cross examination of the people's witnesses revealed glaring inconsistencies in their testimony and an overzealous effort to "send away" No. 4 with the other three. The jury disagreed, standing nine to three for acquittal. The District Attorney then recommended the discharge of bail and the defendant went free. He has since enlisted in the army.

In the other case, tried by the volunteer ex-Assistant District Attorney, a verdict of acquittal was secured. The defendant was charged with a crime for which the maximum imprisonment is twenty

years, and because of its grave nature and a considerable amount of circumstantial evidence against him, his position before a jury was a hazardous one. By reason of the unusually thorough investigation that had been made, all the facts tending to establish the truth were brought out. The searching analysis by our attorney of the weakness of the people's case, together with the fact that the defendant took the stand and testified with inherent truth and frankness in his own behalf, made possible the verdict of acquittal.

In another case involving the larceny of an automobile, the Committee's attorneys received information in the midst of a trial which convinced them of the defendant's guilt. After the people had rested on Friday afternoon an adjournment was taken until Monday morning. On Saturday, at a further conference, the defendant admitted his guilt, told the manner of the theft and where he had sold the automobile. We immediately communicated with the Automobile Squad at Police Headquarters, and by night the car was recovered. On Monday, the defendant pleaded guilty and sentence was deferred in order to provide opportunity for him to testify against two others involved in the larceny; indictments followed.

A boy seventeen years of age who had been employed as a bank messenger was prevailed upon by an older and more experienced youth to misappropriate several thousand dollars belonging to the bank. The money was divided between the two, but our client in a few hours became remorseful and returned his share of the money. Upon his arrest he gave the police every assistance in locating the co-defendant. When the latter was arrested only a few hundred dollars of his share were recovered, and in view of the fact that he had been the instigator of a crime the court sentenced him to the Reformatory at Elmira. Our client's connection with the matter was fully explained to the court and sentence was suspended on condition that he go to the George Junior Republic for such time as the Probation Officer should deem wise. A recent letter from Herman is full of gratitude to the Committee's lawyers for saving him from a penal institution.

STATISTICS COVERING THE OPERATIONS OF APRIL-JUNE, 1917.

Cases	182
Pardons	6
Other Criminal Matters	7
Total	195

RECORD OF 182 CASES.

Age—	
16 to 21 years	77
21 to 25 years	38
25 to 30 years	24
30 years	43
Civil Status—	
Married	54
Single	128
Source—	
Assigned by Court	156
Referred by Other Organizations	10
Referred by Individuals	16
Sex—	
Males	163
Females	19
Charge—	
Larceny	56
Burglary	69
Assault	15
Robbery	22
Homicide	5
Other Crimes	15
Dispositions—	
Plea of Guilty	115
Acquitted	8
Convicted	4
Discharged on own recognizance	16
Dismissed	8
Other Disposition	5
Pending	26
Sentence—	
Suspended	46
Penitentiary	28
N. Y. City Reformatory	8
Elmira	10
State Prison	20
Other Institutions	9
Pending	6

Social Facts—

Parents Foreign Born	110
Previously Convicted	84
Drugs	16
Drink	44
Insane	4
Mental Defect	11
Serious Illness	4