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Correspondence

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CORRESPONDENCE

Editor, "Criminal Law and Criminology."

Sir:—

Governor Whitman's recent pardon to Charles F. Stielow, convicted of murder and four times snatched from the electric chair at the last moment, is the closing chapter in one of the most remarkable criminal cases on record. Stielow's ultimate vindication and restoration to citizenship is due solely to the persistent efforts of private individuals, who, believing in his innocence, waged a successful fight for his freedom. Stielow's release, after a long siege of imprisonment and mental torture, however gratifying to the accused and his champions—and presumably to the state for being spared the odium of putting an innocent man to death—nevertheless seriously challenges the efficiency of our administration of justice. This case, with its many ramifications, motions for a new trial, extraordinary revelations, confessions made and repudiated, stays of execution and appeals for executive clemency presents a striking illustration of legal "red tape" and technicality.

Not only has the "Stielow case" shown conclusively that an innocent man can be sentenced to death, despite the legal "safeguards" which apparently surround him, but it is true that one having undergone such a horrible experience can obtain no redress from the state for his suffering and disgrace. The state is powerless to make adequate amends to its innocent victim.

Is it not a sad commentary upon our enlightened civilization that although the individual may be compelled to pay damages for his wrongful acts, the state is permitted to escape liability for a grave injustice committed by it?

The lesson of the Stielow case is two-fold:

(1) The office of Public Defender should be established to prevent wrongful convictions (particularly with respect to indigents) on the theory that the state should seek to acquit the innocent as well as to punish the guilty, and that the defense should have the same resources as are available to the prosecution. The successful operation of this office in various American communities and foreign countries amply justifies the proposed legislation. Progressive thought is rapidly recognizing that the Public Defender plan is fundamentally sound from the standpoint of justice, efficiency and economy.

(2) The state should indemnify those, who, like Stielow, are the victims of legal injustice. In this connection it is interesting to note that the German law recognizes the right of an innocent person, unjustly punished, to be compensated by the state, viz:

"Those defendants who have been acquitted upon a re-trial, may demand damages or compensation from the state if their punishment pronounced at the first trial has been put in operation, in whole or in part.

"Innocent persons who have been detained in custody before trial and who have been acquitted in criminal cases, may demand damages from the state, if the trial has established their innocence."

The just and equitable administration of the criminal law demands that both of the remedies proposed should be incorporated in our judicial system. The American sense of "fair play" should apply as logically to the state as to the individual. The "square deal" in the courts means the Democracy of justice. If the state can commit a wrong, a remedy should be provided for the one injured.

Yours respectfully,

7 Beekman Street, New York City MAYER C. GOLDMAN.