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Editorials

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EDITORIALS

THE ENVIRONMENT OF THE MUNICIPAL COURT

By reason of the classes and numbers of people that come under its influence there is no judicial tribunal—excepting possibly the juvenile court (if it may be so called)—that has such potentiality for civic usefulness as the municipal court possesses. It is dealing with groups of people who are of more suspicious disposition than are most of the readers of this JOURNAL, and therefore it should even surpass the higher courts in punctilious observance of the proprieties, even in apparently small matters.

We like to associate the phrase “majesty of the law” with the court and even with the physical surroundings in the midst of which its sessions are held. But in the municipal courts or in the police courts of most American cities there is little to suggest that the law and the court are aught but something extraordinarily commonplace. Such courts usually sit in very dingy quarters compared with those that are occupied by courts of higher jurisdiction. This may appear to some to be a trivial observation, but it is not so. This is the people’s court, in which each year a host of citizens and citizens in the making have their only contact in a lifetime with a court directly. What impresses them here is likely to symbolize the tribunal of justice in their minds during their lives, and therefore to go some way toward fixing their attitude towards the courts. The city must then at best divide responsibility with them, if the symbolism is not likeable.

This saying applies with even greater force to the type of court we are discussing, in an account of court officials and attendants and their public management of cases. Neither is there much here that is suggestive of the majesty of the law. There is a discouraging lack of the dignity that should belong to the court, high or low. To the observer—and the witnesses and defendants are observers—the proceedings must appear to be perfunctory. There are whisperings in the ear of the prosecutor and of the judge, and even the visitor who has no interest in the case wonders what is being said. On some grounds such behavior may possibly be justified on occasion, but it is not so if the judge, whilst attempting to administer the law, is at the same time large-mindedly trying to create a wholesome attitude of respect for the courts amongst those who see him at work. A witness after having testified in a case before a certain city court was overheard

saying, as he left the room: "Wonder what that lizard was whisperin' to the jedge?" The reply was: "The jedge knows."

No body of citizens can place the mantle of official dignity directly upon a court and its attendants. They can put the officials into possession of their offices and must leave with them the responsibility for discharging their obligations to the community to the best of their ability. But the citizenship can dignify the office by providing attractive surroundings for the court sessions, up to date equipment to facilitate the transaction of business, compensation adequate to the times, tenure of office, and above all publicly expressed appreciation of good service, irrespective of political party consideration.

In every city it is very largely what the best elements in the population do about the court and say about it that will determine how attractive the judgeship will be to the best type of professional man.

ROBERT H. GAULT.

FACILITIES FOR MEDICAL AND PSYCHIATRIC EXAMINATION IN COURTS

For many years it has been urged that a large proportion of the misdemeanants and criminals that throng our courts are of feeble mind: that is, persons who suffer from an inborn mental deficiency, or from a deficiency dating from very early life by reason of which they are unable to adjust themselves to the conditions of life. This proportion had been most frequently estimated at around 50 per cent. The estimates were based almost entirely upon studies of the population of various prisons and reformatories and the like. More recently this figure has been very sharply reduced—a result of applying revised criteria to groups of delinquents suggested by those used by the surgeon general's office in relation to draftees in the course of the world war. It now appears that of this particular category of offenders there is not to be found a greatly larger proportion than of feeble-minded in the general population. Nevertheless, it is important to find those who are of this sort in our courts and prisons.

There is, furthermore, an undoubtedly much larger group of folk who suffer from instability of character, personality and mentality, and who by reason of their instability are peculiarly liable to break down during periods of stress. They are the victims of incipient mental disease. Such stressful circumstances as war affords make many of these people break, and they are then recognized as frankly "insane." If their breaking is shown more particularly in their hostile reactions

toward other people and their belongings they are called "criminals." But instead of war conditions they may be any other unusual or difficult set of circumstances that occasion outward signs of deterioration in these people, who in other circumstances might jog along without giving occasion for offense. It is at once apparent that to discover *all* such people in advance of their becoming frankly "insane," or nervous wrecks, or before they shall have fallen into the criminal rank is beyond hope of immediate realization. But this is no justification for avoiding the problem. If we can but partially meet it we shall so far have solved one of the problems relating to the administration of criminal justice. The municipal court in Chicago with the psychopathic laboratory, is an outstanding illustration in this connection; and in the corresponding institutions in Boston and in Detroit the laboratory (or clinic) has amply demonstrated its usefulness as an arm for the effective functioning of the court.

In Chicago commitments to institutions suited to the defective and the mentally diseased are being made at the rate of approximately 1,000 a year on the basis of laboratory examinations. This is approximately one per cent of all the felony, quasi-criminal and misdemeanant cases (103,150) that were disposed of in the course of the year 1920 in the Chicago Municipal Court, and therefore somewhat less than one per cent of the total number of defendants before the court. It is impossible to estimate the relief from disorder and repeated convictions that comes from all these commitments. There is good evidence for the proposition that one who has repeated four or more times is *at least almost* invariably a subject for the psychopathic laboratory by reason of his habits built upon an unsound foundation. To return to a late report of the Chicago court we find there condensed accounts of 202 individuals, repeaters of from the second to the fifteenth degree, all of whom are, according to the laboratory report, suffering from mental defect or disease.

The psychopathic laboratory for the study of criminals, misdemeanants and delinquents in general is no longer an experiment. If it is in the hands of well trained persons who are more interested in finding the mentally incompetent and in working for their temporary or permanent segregation than in propagating an *ism*, it will demonstrate its usefulness.

It may be a debatable question whether such a laboratory or clinic should be located in the workhouse or prison, at police headquarters, in close vicinity of the court, or elsewhere. The prison laboratory could meet only those who are incarcerated—this is one of its disadvan-

tages—but it would have some option as to the time for making examinations: it could select a season when the prisoner is most favorably conditioned for an examination. Its findings in a particular case would be too late to be of service to the court unless he should subsequently be a defendant.

The laboratory at police headquarters would reach the prisoner when he is probably in the least favorable mental state from the examiner's viewpoint. At the headquarters of the court is undoubtedly the most suitable place for it, though there may be some disadvantages even in this connection.

The ideal system would find the mentally feeble and the psychopathic in the public schools; it would effect segregation or other proper disposition from this point, and would maintain a record that would be serviceable subsequently to the court in case there were occasion to consult it in any particular. But this provision could not negative the necessity for a laboratory in the court, for, while the feeble-minded school child will always be a mentally defective, one or another type of *mental disease* may develop between the date of diagnosis in the school and appearance, perhaps years afterward, in the court.

Next to the public schools and possibly the Juvenile Court, the Municipal Court, Criminal Division, is the most important clearing house in the city for weeding out the elements of the population that are dangerous to public peace and safety by reason of their incompetency. A competent psychiatrist who is established as an arm of the court could, by co-operating with the prosecutor's office and the court, perform a service for any city comparable to the best that is being accomplished in the jurisdictions referred to above.

It may be urged that such an official would be unable, in many instances, owing to the necessarily brief time at his disposal, to make a diagnosis. In such cases a way should be provided, as in Massachusetts, by statute, whereby the court could commit the defendant for *observation*, and for a period not exceeding six months, to any state institution for the mentally diseased.

ROBERT H. GAULT.

THE PUBLIC DEFENDER

It is customary for one or several lawyers who live mainly by the defense of poor persons accused of crime to haunt the corridors adjacent to the rooms of many of our municipal courts to solicit cases,

and in the mornings to look over the list of names of persons arrested the night previous, and, representing himself as a lawyer retained by the prisoner, to ask to see him in his cell. He then, in many instances, tells the prisoner that a friend has asked him to look after his case.

An analysis of cases in higher and lower courts defended by assigned counsel for the purpose of making comparison with cases otherwise defended would probably bring forward some useful results on this point. Suffice it to say that the recent analysis of the situation in Cleveland brought out no indication of significant differences as to the results of the administration of criminal justice between groups defended by assigned counsel, privately retained counsel and by "professional" criminal lawyers. Nevertheless the institution of the Public Defender was recommended there on these grounds principally: (1) Economy. Whereas the courts in Cleveland expended, during 1920, \$32,500 upon assigned counsel in 528 criminal cases, the city and county of Los Angeles, California, spent in 1917 upon the office of public defender, which handled 522 cases, only between \$20,000 and \$25,000. But in addition to the 522 criminal cases the Los Angeles office took care of approximately 8,000 civil cases. This is interpreted as an indication of efficiency arising from specialization.

(2) So well satisfied are the people of California with the work of the office that a year ago the state legislature enacted a law empowering every county in the state to follow the lead of Los Angeles in this particular. It is worthy of notice, too, that the prosecutor in that city freely testifies to the usefulness of the office and to its helpfulness to him in his official capacity.

(3) The office "becomes an institution, crystallizing experience, collecting facts, formulating opinions, and interpreting to the public one aspect of one of society's most vital institutions—the enforcement of the criminal law in the courts." Quoting from Mr. Elihu Root:

"The creation of institutions which, in an orderly way, may crystallize and present and preserve the opinions of men who are especially competent to form them in each field and branch of public affairs, is a necessary part of the process of free self-government."¹¹

To the foregoing we add the following:

(4) As the office of public defender establishes itself in a municipality it will tend to relieve the court of the objectionable "atmos-

¹¹See *Reynolds*, "The Public Defender," *Jour. Crim. Law and Criminol.*, XII, 4 476 ff. Also *Smith*, "The Public Defender Recommended in Cleveland, do., 490 ff.

phere" to which we have referred by reason of making a substitution for a certain class of lawyers because the defender will, in the normal course of events, and in a dignified manner, become the representative in court of many defendants who are now, in most jurisdictions, the prey of the less desirable elements of the legal profession.

Many people will object to the institution of the office of Public Defender, as they do now, on two grounds at least: (1) It is the duty of the prosecutor to conduct his operations without prejudice, solely in the interest of justice. If he falls short the remedy is against him *directly* rather than indirectly by creating another office over against his.

The answer to this is that the public defender is not, where the office has already been created, "over against" the prosecutor, but complementary to him, obtaining data that in the interest of justice will be useful both to the defense and the prosecution, and placing all cards distinctly upon the table.

(2) A new public office such as this is only another point of advantage for the professional politician.

The answer to this objection is that the public defender is not necessarily a *public* official in the full sense. He should no doubt better be, in a city like Cincinnati, a quasi-public official, selected and supervised by private organizations.

Selected and supervised in this manner a strong public defender would be an obstruction to sub-surface manipulations that are alleged to occur in relation to so-called criminal justice and it would soon become imperative upon such forces behind the scenes as are said to make prosecutors and judges and clerks in this and that jurisdiction to find high class men for these offices respectively. Besides, he would soon prove himself a most important link between the court and more or less auxiliary institutions.

ROBERT H. GAULT.