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Notes and Abstracts

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NOTES AND ABSTRACTS

Economic Toll of Crime.—"In the current number of the Bankers' Monthly Carl H. Getz makes a study of the economic toll of crime based on the records of fidelity and insurance companies, police departments and business associations. Payments by insurance companies on burglary claims have increased tenfold in the last ten years. Payments on embezzlement insurance have increased sevenfold.

"If the bootlegger billions could be counted, and if political graft could even be remotely estimated, to say nothing of the earnings of arsonists, the total would certainly lead the gross earnings of any industry save farming, or manufacturing considered as a whole.

"William B. Joyce, chairman of the National Surety Company, estimates that burglars get \$225,000,000 annually; bandits, \$50,000,000; common thieves, \$150,000,000. He figures that embezzlers get away with \$125,000,000 per year. Fraudulent bankrupts and credit swindlers rake in \$100,000,000. Merchants cash over \$100,000,000 worth of bad checks per year, and forgers and raisers get them for \$25,000,000 more. Stock and land fraud and confidence games are figured at \$2,000,000,000 per year.

"Political graft is simply incalculable.

"Bootlegging. Our national drink bill when booze was \$2.50 per quart and beer cost the saloonkeeper \$5.00 per barrel, was about \$1,200,000,000 per year. Beer costs the saloonist \$50.00 per barrel, and bootleg retails at an average of \$12.00 per quart. Prohibition is effective in the cities, say 80 per cent, but in the small towns and farming country it is probable there is more liquor than under the local option régime. In driving drinkers back to the home still and brew, where the industry originated, the law-makers have added enormously to manufacturing and distributing costs. 'Cottage industry,' beloved of the high-brows, has been restored in this case. Certainly the outlawed industry is costing consumers as much as it did when legal.

"It is time to quit speaking of the criminal classes as a strange fringe on society and realize that, if society loses as much in the next twenty years as it has in the last twenty in the struggle with the anti-social elements, the curtain may fall.

"Over thirty years ago Herbert Spencer called attention to the fact that the mania for new laws and state meddling was developing at a time when the existing laws and their administration needed drastic overhauling. It is quite probable that governments could save enough by checking crime to pay their national debts.

"The problem of degeneracy now exercising the biologists has a dollar and cents meaning to business men. Continued propagation of degenerates, moral or mental, and the two are usually associated, means higher operating costs for every business concern in America.

"The key to the crime problem, like most other questions of human progress, was probably found by an Austrian monk, Gregor Mendel, sixty years ago. Experimenting with green and yellow peas in the little monastery garden, he seems to have found out more about how plants, animals, and men are generated,

and why they behave as they do, than all the politicians and moralists who ever wrote or talked.

"What he started has been confirmed and extended by scientific experiment. The old saws which embodied folk wisdom have been confirmed by science. 'Like father like son,' 'the fathers have eaten sour grapes and the children's teeth are set on edge'—all of them show that popular intuition in the childhood of the race was on the right track.

"If we continue to breed criminals, we will continue to have crime; if we keep on putting a premium on the breeding of mutts, democracy will graduate into muttonocracy. To quote again the wise man whom Japan once asked for advice, 'The net result of passing laws to protect fools from the consequences of folly is to breed a world of fools.'

"In the laws we have enacted, as well as in those we have not enforced, may be found the reason why crime is now a leading industry."—*Chicago Tribune*, May 3, 1923.

Public Defender.—"The administration of the criminal law, rightly understood, is one of the highest functions of society, and for this reason it deserves the most profound thought of our best minds. It is also for this reason I think it appropriate to discuss the bill which is to be presented to the coming Legislature, and to endeavor to awaken the interests of our citizens in the establishment of the office of Public Defender for Baltimore City, to take care of the defense of those persons accused of criminal offenses, who, because of poverty, are unable to secure capable legal services, together with a thorough investigation of their cases.

"The Carnegie Foundation, several years ago, issued a book called 'Justice and the Poor,' from which the following is quoted:

"The inability of the poor to pay for the services of counsel has often been stated, and the general fact is known. The vast number of persons who are thus debarred from legal advice and the essential services of the lawyer in court, however, is not realized. It is possible to form an estimate of what this number must be. It is known that in 1913 the average wage of the clients of the Cincinnati Legal Aid Society was \$10 per week, and that in the year 1916, out of 1,981 cases analyzed by the Legal Aid Society in Newark, 80 per cent of the applicants earned less than \$20 each week, and that married persons with dependent families, earning less than \$800 yearly, are never in a financial position where they can afford to pay any substantial sum for attorneys' services. Within these classes there are 3,758,000 single persons and 7,040,000 families. Inasmuch as each member of a family, the wife and children as well as the husband, may need legal advice and assistance, it is proper to multiply the families out to their number of constituent individuals.

No Means for Attorneys

"From this calculation it appears that there are in the United States over 35,000,000 men, women and children whose financial condition renders them unable to pay any appreciable sum for attorneys' services. It is true that in country districts and in the smaller towns such people generally are able to secure assistance from lawyers as a matter of kindness or charity, consequently it is primarily in the larger cities that inability to pay fees results in a denial of

justice. Even if we were to eliminate, however, the 88 per cent of our population living in cities and towns containing less than 100,000 inhabitants, there would still remain 8,000,000 persons who do not know where to turn for legal advice and assistance when the need arises. These figures are only approximations. Cut them in two and it is still perfectly apparent that a thorough-going, equal administration of justice must take cognizance of, and provide for, a class of citizens, numbering millions, who cannot secure for themselves the legal services without which the machinery of justice is unworkable.

"It is to remedy some of the evils to which the above directs attention and to supply the means by which any person accused of a criminal offense, and who is, because of poverty, unable to (1) have a thorough impartial investigation of his case made by capable investigators, and (2) to have the case presented by counsel sufficiently interested and capable to warrant any time the case may require, no matter how much, in order to see that justice is done.

"At present attorneys, like men in other vocations where the fee is small or nothing at all, do not care to, or have not the facilities to, or are not in position to give criminal cases the serious thought and attention they deserve. This in spite of the fact of the much good many attorneys are doing in the endeavor to assist, as best they can, the indigent and the unfortunate.

"Not only would a public defender look out for the welfare of the accused, but he would also, being a state official, keep in mind the duties due the state and society. He would present the facts in a manner which would render impartial justice to the accused, as well as be the means of rendering equivocal justice to the state.

Would Not Encourage Crime

"To the large number of citizens who believe the idea of the Public Defender is sound, but because of the general condition of unrest at the present time, and of the many acts of violence, new legislation at this time is not desirable. I should like to point out that the Public Defender would not be encouragement to wrongdoing, but on the contrary he would aid the court in seeing that justice is dispensed with certainty and without delay.

"In the above connection the Public Defender of Los Angeles has this to say: 'I believe the appointment of a Public Defender would have the opposite result than encouraging crime. The new officer would certainly not reform the world, but he would cause a feeling among the great bulk of the people in very modest circumstances that the government is trying to do justice to all, rich and poor alike. The new officer would aid a great deal toward allaying the present state of unrest. He would not be appointed for the purpose of freeing criminals, regardless of merits, but he would represent those accused of crime who otherwise would not have a proper defense.

"A case which probably illustrates the need of an official who would, regardless of expense, see that justice to the accused poor persons is available, occurred in New York about seven years ago and is quoted in Mayer C. Goldman's book, "The Public Defender," published several years ago.

"Alfred Switofsky was sent to the state prison of New York for a term of 20 years for burglary and felonious assault. In June, 1914, the State Board of Paroles held a hearing, which was brought about by the prison chaplain (whose persistent efforts brought the case to light), the secretary of the Prison Society of New York, a well-known editorial writer and two prominent lawyers.

At such hearing the prisoner told a remarkable tale of police hounding; declared his innocence of the charge, and produced witnesses to corroborate his story." Mr. Goldman then quotes the following from the New York Times of June 9, 1914: "He told how three New York lawyers had been assigned (by the court) to his case, who had practically ignored him; of how he had been identified by persons under duress of how he had not been able, on account of his lack of means, to produce a single witness in his defense; of how he had not been able to explain many things that counted against him at the trial; of how important witnesses had been ignored."

Sentence Commuted

"Continuing Mr. Goldman's narrative: "It was also reported that the most effective incident in Switofsky's interest was an admission by the assistant district attorney 'that the district attorney had become convinced, by reason of newly discovered evidence, that Switofsky was not guilty of felonious assault, upon which charge 10 years of his 20-year sentence was based, and that the district attorney was willing to recommend to the governor that his 10-year sentence be revoked by a pardon or parole.' On September 18, 1916, Governor Whitman commuted Switofsky's sentence."'"

"We all know that in theory every person is supposed to be innocent until guilt is proven beyond a reasonable doubt. In practice, however, every lawyer knows, as well as all observers of criminal practice know, that the very reverse is true, and that the mere fact of being charged with a crime presupposes guilt. In practice it is for the prisoner to prove his innocence and not for the state to prove the prisoner's guilt.

"A great many people believe that the state's attorney will not prosecute where there is innocence? But the question is, how would he know innocence? He obtains his evidence from the Police Department, who vigorously searches for evidence of guilt, not of innocence. Therefore, the duty of proving innocence and of citing law in the defense of the accused devolves upon the accused's attorney, which shows how necessary it is that the accused have legal representation.

Half of Cases Not Represented

"Observation and experience in the Criminal Courts lead me to believe (judging from the assignments each day) that about one-half of the cases are not represented at all. There is no investigation before trial. Occasionally during the year an attorney may be assigned by the court, mostly in those very serious cases where the punishment may be capital. Occasionally in a minor case some very few of the judges may appoint an attorney. But his defense is usually mechanical—technical. There is no special effort to investigate and get at the facts. It is simply a method of making objections and taking such advantages as the law permits. This phase of it is correct. But the main point is did he do it. If he did not it makes no difference whether he appears guilty or not? The question is simply whether he is unjustly accused and convicted, and not whether the court did the best it could with the evidence before it.

"There is absolutely no excuse for an innocent man going to jail, if the means are available to prove that innocence. It is a reflection upon the good name of the state to say it is not sufficiently interested to dig deep, to find out the real facts instead of the apparent facts. Justice is justice, and injustice is

injustice, even if the court or jury did the best it could with the evidence presented. Get the evidence, then present the evidence, is a good slogan for criminal procedure. Make the prisoner understand that when he enters the prison gates it is he who has sent himself there, not the court. Give him a square deal, and the prison population will decrease, not increase by leaps and bounds, as it is at present doing.

“Quoting again from the Public Defender of Los Angeles: ‘There are no statistics to base a judgment upon how far the defender will prevent the conviction of innocent persons. One rarely knows whether the accused is innocent or guilty. There are very rarely impartial eye-witnesses to the act. Only the accused, and sometimes his accuser, have absolute knowledge, and the word of neither can be accepted as final. There is no way to ascertain how many verdicts of guilty are erroneously found under our present system. In France they have a proceeding whereby a man, once found guilty, and his case closed, can some time later secure a new trial and be pronounced innocent. With us he may be pardoned or paroled, but never acquitted.’

May Prevent Some Convictions

“It is unquestionable that the existence of the defender may prevent some unjust convictions. We believe that by a jury verdict after a fair trial we approximate the truth as closely as is possible. The defender reduces the danger of error to a minimum because he guarantees a fair trial to everyone. This is the fact in Los Angeles. Although the defender instructs more of his clients to plead guilty than did assigned counsel under the former regime, and although he tries only cases where he has faith in the defendant, he has secured substantially a larger number of acquittals.’

“The case of the defender rests primarily on the fact that such an office performs an essential function in the administration of justice more efficiently, more economically, and with all-round better results than any other plan. The increased efficiency can readily be appreciated. It is apparent that, if other factors are anywhere near even, the attorney who is occasionally assigned a criminal work is more familiar with the law and details of procedure than the attorney who is occasionally assigned a case. Centralization of work makes specialization possible. The office learns the easiest methods of conducting the work, it develops its own staff of investigators and knows the proper authorities to consult as points arise. The defender becomes an expert in criminal law, just as we have experts in patent, mining, admiralty and corporation law.’

“The number of indictments tried yearly in Baltimore is very large. As a general proposition many hundreds of cases are disposed of yearly without the appearance of counsel for defendant. In all these cases a large and unjustifiable responsibility is thrown on the courts. This state of affairs has increased the labor and the duty of judges of Baltimore City. This produces a system of speed and economy. But it is quite possible that the public, as well as the profession, has not given much thought to how this works out.

“It is clear that the average man does not know how to cross-examine the adverse witness; he does not know whether it is to his advantage to take the witness stand; he is terror-stricken by the might and power of the state and loses hope and despairs because of his inability to meet the situation. It is true the trial moves with speed and economy. But are these qualities in administering justice so important that there should be no limit to them? Is the state

so poor that it must incur the danger of injustice in order to get through as many cases as it can? These are questions vitally affecting the whole community, and your individual rights and duties as citizens of the state.

A Fundamental Right

"The equal administration of the law is a fundamental right guaranteed by the fundamental law of the land. It must and should be possible for the humblest to invoke the protection of that law where any of his rights have been violated, or attempted to be violated, or otherwise freedom and equality cease to exist. For this reason the state should shield those indigent persons who need its protection. It should not be left to private citizens. The state should give the accused justice, not charity.

"The adoption of the Public Defender bill will have the tendency of inspiring the people with the belief that the machinery of the courts have become more effective in stamping out crime. Practically it will so work, as in Los Angeles, that when the Public Defender finds he has a guilty man on his hands, he will not set out to have him acquitted. He will face the problem of defendant's future career. If the evidence shows the accused to be guilty, he will so advise, providing there is no reason to believe the verdict would be otherwise. If the defendant refuses to plead guilty the Public Defender will withdraw from the case and the accused may seek other counsel.

"A certain class of offenders would not be pleased with this situation and would probably steer as clear of the Public Defender as he would of the State's Attorney. As in Los Angeles, if the defender cannot withdraw from the case he will demand legal proof of the defendant's guilt and see that perjury is eliminated from the case.

"The strongest argument for the creation of this office is its success in Los Angeles and elsewhere. The most serious objection has been the expense incurred. However, in Los Angeles, where it has been thoroughly tested, the Public Defender actually saves money to the state by eliminating delays and useless trials."—Samuel Rubin in the *Baltimore Sun*, Jan. 29, 1922.

Recognized "Authorities" on Analyzing "Documents in Dispute."—While the law is not at all specific as to the "Qualifications" of a Person Admitted in Courts to give "Opinion" Testimony as a "Handwriting Expert," Yet it is *Excellent Argument*—to a Judge or Jury—to either Urge the Acceptance of the "Expert's" *Opinion* (if Backed up by *Forceful, Clearly Understandable Reasons Why he Reaches that Opinion*)—or else to urge the *Rejection* of that Opinion—Depending upon *What the Testimony* (Sworn) Shows that Expert *Has Done* in the Way of *Studying All* (or Some) of the *Recognized Published Works* (*Books*) on *Forgery*, or *Criminal Writings*, or *Fraudulent Documents*.

There is *No Question* but that the Book "Questioned Documents," by Albert S. Osborn, of New York City, is, up to 1922, a world-recognized *Authority* and the *Best* of the "General" *Books* on the subject of *Documents in Dispute*.

In this noted work, under the heading of "*Bibliography*," on page 483, Osborn cites (among other works of more technical, more special, or more antiquated—out-of-date—volumes) the books listed below.

After my twenty-five years' personal technical observation of Court trials in which "Documents in Dispute" were involved, it is my emphatic opinion that—

No person who has *Not* read and *Studied* at least a half dozen of These Books is Really Entitled to Pass an "Opinion" on any "Document in Dispute"—an Opinion Worthy of the Serious Consideration of Judge or Jury:

- **Ames, Daniel T.: "Ames on Forgery," New York, 1900.*
- **Bausch, Edward: "Manipulation of the Microscope," Rochester, N. Y., 1897.***
- **Blackburn, Douglas, & Caddell, Captain Warthman: "Detection of Forgery," London, 1909.***
- **Carvalho, David N.: "Forty Centuries of Ink," New York, 1904.***
- **Frazer, Dr. Persifor: "Bibliotics, or the Study of Documents," Philadelphia, Penn, 1901.***
- Galton, Sir Francis: "Finger Prints," New York, 1892.*
- **Hagan, William E.: "Disputed Handwriting," Albany, N. Y., 1894.*
- Henry, Sir E. R.: "Classification and Uses of Finger Prints," London, 1913.***
- Salamanca, Don Felix de: "The Philosophy of Handwriting," London, 1879.*
- In addition to the works listed by Osborn, my own studies and observations, as well as my actual experiences in Courts, induce me to recommend (and even *Urge*) that all persons who are to be expected to give "opinion" testimony on matters involving documents in dispute should be quite familiar with the contents of the following published books:
- **Allen's "Commercial Organic Analysis," Vol. 5; Sections on "Inks," "Carbon Papers," "Typewriter Ribbons," etc.; Blakiston's Son & Co., Philadelphia, 4th edition, 1910.***
- **Eastman Kodak Co., "Photomicrography," 5th edition, Rochester, N. Y., 1919.***
- **Eastman Kodak Co., "The Photography of Colored Objects," Rochester, N. Y., 1922.***
- Gibson, Charles R.: "Romance of Photography," Seeley & Co., Ltd., London, 1910.*
- **Hardless & Hardless: "Faults & Fallacies in Handwriting Identification," Chumar, United Provinces; India, 1919.***
- Hardless & Hardless: "Forgery in India," Chunar, United Provinces; India, 1920.***
- Hardless, Charles, Jr.: "Identification of Handwriting and Detection of Forgery," Chunar, United Provinces, India, 1917.***
- Hingston, W. E.: "Little Clews," Boston, 1921.***
- Hingston, W. E.: "The Settling Price," Boston, 1920.***
- Hingston, W. E.: "Forgeries and False Entries," Boston, 1908.*
- **Holt, James: "Finger Prints Simplified," Chicago, 1920.***
- Kinsley, Wm. J.: "Alteration of Checks," New York, 1906.***
- Kinsley, Wm. J.: "Typewriting Identification," New York, 1912.***
- Kinsley, Wm. J.: "Document Photography," New York, 1912.***
- Lavay, Jerome B.: "Disputed Handwriting," Chicago, 1909.***
- **Locard, M. de Dr. Edmond, Directeur du Laboratoire de Police Technique de Lyon (France), "L'Expertise des Ecritures par les Méthodes Scientifiques," Paris, France; Payot, publisher, 1922.***
- Lucas, A. (Egyptian Government Expert): "Legal Chemistry & Scientific Criminal Investigation," London, 1920.***
- M'Govern, Chauncey: "Detecting Criminal Writing," Manila, Philippines, 1912.***

Osborn, Albert S.: "Questioned Documents," Rochester, N. Y., 1910.

Osborn, Albert S.: "The Problem of Proof," N. Y., 1923.

Rose, L. G.: "The Commercial Photographer," Philadelphia, 1920.

The study of the works labelled with a double star () is considered by me to be quite Essential, by anyone, before he should be admitted as a "hand-writing expert" witness in Any court.

***Studied carefully by Chauncey McGovern, who owns a copy.

—From "Preparing for Trials Involving Forgery," by Chauncey M Govern.