

The Inquiring Mind

This series of articles, on many different subjects, results from work by senior students at the school of journalism at the University of Oregon. Each is a condensed version of a full-length thesis written as partial requirement for graduation at the school.

THE POOR, THE COURTS, AND THE PUBLIC DEFENDER

By Don W. Robinson
Clarence Darrow, 67, famous defense lawyer, faced an audience that filled New York's Manhattan Opera House the evening of Sept. 23, 1924.

A few weeks before, he had persuaded a Chicago court to spare the lives of Leopold and Loeb, perpetrators of one of Cook County's most notorious murders.

This night Darrow was not pleading at the bar. He was debating against a distinguished New York judge, Alfred J. Talley, the merits of capital punishment. In the course of the debate, Darrow remarked:

"... I am glad to learn from the gentleman (Judge Talley) that if a man is so poor in New York that he can't hire a lawyer, that he has a first-class lawyer appointed to defend him — a first-class lawyer appointed to defend him.

Don't Take a Chance
"Don't take a chance and kill anybody on the statement made by my friend. . . . As a rule, it is the poor and the weak and the friendless who furnish the victims of the law."

Darrow did a splendid job that September night convincing the opera house audience that capital punishment was a barbarian practice.

But what about his passing statement? Do the "poor and the weak and the friendless" really furnish the victims of the law?

The old master attorney was not the only man to think so. And as the result of efforts by men who have thought as Darrow did, this country has seen a slow but continued movement toward the establishment of a new legal officer, the public defender.

More Equal Justice
The aim of the public defender movement is to make justice more nearly equal between the poor and the rich accused of crime.

A public defender is an officer of the government—city, county or state—whose job it is to defend persons accused of crime who do not have the money to hire a private defense attorney.

He is, in a way, an opposite and equal counterpart of the district attorney. Both are officers of the state. But the job of the district attorney is to prosecute, to plead the case of society against the accused offender. The public defender pleads instead the case of the accused, when the accused hasn't financial means to hire his own lawyer.

The public defender "idea" first gained support in this country about 50 years ago. Los Angeles County was first

to establish the office, in 1913. Today that office is manned by a defender, some 15 deputies, two or three investigators and about five clerical workers.

In Larger Cities
At present there are public defenders in approximately 88 United States cities or counties. Most of these places are on the list of most populous communities.

What is the case for the public defender system?

The Sixth amendment to the United States Constitution guarantees that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of Counsel for his defense."

In areas where there is no public defender, counsel for indigent defendants in state and federal courts is provided mainly through assignment by the presiding judge of members of the private bar.

In the majority of states, counsel assigned in this manner is paid by the state only in cases of capital crimes.

It has been established that 60 per cent of defendants in criminal cases cannot afford to hire a defense lawyer. Most persons in this group acquire legal help through the appointment system.

Bar Has Opposed

Bar associations, for the most part, have held the appointment system to be satisfactory. They have opposed the public defender system. A number of individual lawyers, college professors, judges and other men in public life have given support to the public defender idea, claiming the older system is inadequate.

Among charges made against the traditional method of appointing defense lawyers are these:

The least competent lawyers are appointed. Appointed attorneys do not have sufficient time or resources to carry out an adequate investigation for their client. The bar, particularly in large metropolitan areas, has become more private, has lost its former sense of duty to the public, and judges have become just another civic official. Also, the very size of the indigent segment of city populations has discouraged many attorneys who might have aided poor individuals in a more leisurely, rural setting.

Denials, Compromise
Reply to these accusations has usually come in the form of flat denials, or a compromise approach. The latter view holds that faults of the appointment system can be remedied without such a drastic measure as the establishment of the public defender office.

The question involves both practical and theoretical aspects of the courts and the law. It is dangerous, and for



MYSTERY BEAR—Two cops shot and killed this 250-pound black bear near the center of the city of Baltimore. Where the bear came from, and how it got into the city, is a big mystery.

Kentucky Moonshine Industry Booming Backwoods Business

Louisville, Ky. —(UPI)—The Kentucky moonshiner may not be the splay-footed, big-nosed, unshaven character depicted in cartoons and movies, but he remains very much in existence today.

No exact figures are available, but there is good evidence that the moonshining industry is booming in the backwoods and hill country just as it did 20 years or more ago, and perhaps is doing even better.

Agents of the Alcoholic and Tobacco Tax Division of the Internal Revenue Service — "revenuers" — arrested twice as many moonshiners during the last six months of 1958 as they did in the last six months of 1948.

That was partly because the IRS was trying harder, but it also indicated there was just as much moonshining going on as ever, if not more.

Violations Persist
During those last six months of '58 agents in Kentucky made 145 arrests. They confiscated 164 stills and seized 50 automobiles.

No other type of violation has remained such a persistent characteristic of the people of the area as illicit

practical reasons impossible to make a general assertion as to the need or absence of need for a public defender.

The situation of the courts, and the attainment of justice, varies from city to city, from state to state. An adequate study to determine whether the public defender system should be adopted must, of necessity, be made on a local basis. The results must be considered applicable in their specific conclusions to the area studied only.

Not so long ago there were

many parts of Kentucky where the automobile had never been seen. Revenuers were strangers, and when they came snooping around, they ran a good chance of being shot at.

There are still a few such localities, but for the most part the constant push by the officers against illicit distilling has brought a better understanding, or maybe it's fear, to the moonshiners.

Added Penalties
Agents now are seldom fired upon, because the moonshiners know the added penalties of having a gun around the still. In addition, many of them have become acquainted with the agents and respect them.

Sometimes they have even become friends, each knowing all about the other, and playing a good-natured game of "catch me if you can."

If the moonshiner loses, he'll shake hands with his captor, congratulate him and go along to court without protest.

One agent who for many years worked along the Big Sandy River—the stream that forms the border of Kentucky and West Virginia and was the boundary line in the Hatfield-McCoy feud of half a century ago—tells this story:

One morning he and two other officers lay in wait and watched as a father and his two teen-age sons came along, fired up their improvised furnace and put the still in operation. The agents came out of their hiding place and arrested all three.

The father and his sons watched as the raiders used axes and sledges to break up the still, and shook their heads more in sorrow than in

Deaf, Blind Girl Gets Diploma

Stockton, Calif. —(UPI)—Blonde Jackie Sennol Coker, who has been blind and deaf since the age of 7, graduated with honors last night from the College of Pacific.

The 31-year-old B plus student received two diplomas, one printed in braille.

Jackie went blind and deaf after being stricken with spinal meningitis at her home in Coolidge, Ariz. But her parents, who now live in Napa, Calif., refused to pamper her.

At the age of 31, she graduated from high school and started her college career with the aid of her interpreter-companion and tutor, Dorothy Klaus.

Jackie completed her studies at College of Pacific in February to become the fourth person to earn a college degree under the double handicap. First to do so was Helen Keller, followed by Robert Smithdas and Richard Kinney.

Since February, Jackie has been taking graduate work at the University of California in Berkeley. Her ultimate goal is to become a home teaching counselor for the blind and deaf.

anger as the gallon jugs of "white lightning" were smashed against rocks and trees.

The job done, the party wound its way back down a narrow mountain path to the family cabin where the mother and daughters had a hot dinner ready for all hands—including the agents.

Knowing that refusing a mountaineer's hospitality is a deep insult, the agents sat down to a hearty meal of boiled potatoes, hominy grits and corn bread — with a small glass of "white lightning" for an appetizer.

The revenuers are inclined to be a little less tolerant in sections where there are more opportunities to make a legal living. One agent in south central Kentucky reports that in his 15-county area there are not more than 10 per cent of the number of stills there were a decade ago.

This is because new industry has come to the region, the farming is good, and the IRS agents have kept up a constant drive against moonshining.

Attitude Important
Most important of all, the agent says, is the attitude of the Federal judge in the area, because "without convictions, we cannot combat the moonshine situation." During 1958, of all those arrested for moonshining in the United States, 27 per cent were not convicted.

Some of those who are arrested and sent to prison make good use of their time. They are well behaved and eligible for parole early. They also learn a trade in prison, such as sheet metal work, plumbing or mechanics.

So, when they come out, they are able to build bigger and better stills.

What Is The Law?

This column is prepared as a public service by the College of Law, Willamette University, Salem, to explain basic legal principles, not to provide legal advice. The reader is cautioned not to apply these cases to his own problems without an attorney's advice, for differing facts may change the outcome.

Employer Cannot Unjustly Enrich by Breach of Contract

Years ago, in North Carolina, a young man was hired by a cotton mill at a stated weekly salary. He accepted the offer of the job after having been told of the salary and that there would be a bonus at the end of one year for continuous service throughout the year. After working for approximately six months he was discharged without reason by his employer. He was paid for his weekly services up through the date of discharge.

The worker requested that he be paid half of the bonus but this was refused. The mill explained that to be entitled to any of the bonus it was necessary that he work for the full year. The employee brought a legal action against the cotton mill seeking half of the bonus. The court decided for the employee, pointing out that the mill had breached the employment and had made it impossible for the young man to complete the entire year. He was awarded one half of the yearly bonus.

Courts in Agreement

The courts throughout the country are pretty much in agreement in this type of situation where the employer is the one who wrongfully breaches the contract.

The problem is considerably more difficult if it is the employee who wrongfully breaches. In North Dakota a laborer entered an agreement with a farmer promising to

thresh all of his grain. He threshed all the wheat and oats but refused to thresh the flax. The farmer refused to pay him for the work done so he brought an action seeking to recover an amount equal to the reasonable value of his services for threshing the wheat and oats. The court held for the worker permitting him to recover even though he was the party who has wrongfully breached his contractual agreement.

Obligation Implied

This case and the North Carolina case are both based on the theory that to refuse recovery would "unjustly enrich" the employer at the expense of the employee. The law takes the position that no one should be permitted to retain a benefit that is in fact an enrichment that he does not justly deserve. The law then implies an obligation on the person holding such enrichment to make restitution by paying the reasonable value to the proper party. It should be pointed out that the case from North Dakota probably represents a minority view of the courts. Several courts have described that position as the trend but are reluctant to describe it as the weight of authority.

It is interesting to note that this device of permitting a person to recover a benefit on the basis of "unjust enrichment" was developed by the courts and is a relatively recent thing. The courts became disturbed because they saw many situations where the

Six Persons Killed In Head-On Crash

Mojave, Calif. —(UPI)—Six persons, five of them from one family, were killed Sunday night when two cars crashed head-on on a straight stretch of U.S. highway 6 about 100 miles north of here.

California Highway Patrol officers said the cars were almost welded together and that acetylene torches were used to free the victims. Included were injured passenger, a seven-year-old boy.

The dead were identified as Processo B. Subala, 60, of the China Lake Naval Test Center, Calif.; Thornton W. Howard, 28, of Edwards, Calif.; Howard's wife, Millie, 26, and their three children, Susan, 8, Cindy, 5, and a 6-month-old baby.

The lone survivor, 50-year-old Howard, was reported in critical condition at the county hospital at China Lake.

Farm produce constituted the entire export of Sierra Leone, West Africa, in 1928, but only 48 per cent of the total in 1955, the remainder being minerals.

complaining party really had no remedy and another party was being improperly enriched thus prompting the institution of a new remedy.

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