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## LEGAL AID FOR POOR PRISONERS

ROBERT FERRARI<sup>1</sup>

There are no such things in Paris as Legal Aid Societies as we know them in America. Aid in civil matters is given by the state. Legal Aid Societies in America do not defend poor prisoners. The system here of appointment of counsel for the prisoner by the judge is used in France; but only in certain cases. For instance, if the President of the Cour d'Assises (the County Criminal Court with a jury), when he examines the defendant before his appearance in his court, which he has the duty to do under French law, finds that the defendant has no lawyer, he appoints one on the spot. Usually, however, the appointment is made by the *bâtonnier*, the President of the Order of Barristers.

The people who are appointed in France are good. An investigation by a committee of the New York County Lawyers' Association, brought out the fact—testified to by judges and district attorneys throughout the state—that in the smaller towns of the state young and inexperienced men were assigned as counsel for the defense of prisoners. This may be true. But in some large cities like the City of New York, it is not young and inexperienced counsel who are appointed, but counsel who have been in practice for some time and who know a great many pettifogging tricks of the trade. They are shysters, pure and simple. The reasons for the existence of the shyster I shall only indicate here, and I shall draw a comparison between him and the kind of lawyer you find in the *Palais de Justice* in Paris.

In a city like New York, you have criminal lawyers constantly practising in the Criminal Courts Building, who have no scientific knowledge of the law and have only a practical knowledge such as the pettifogging lawyer has. Whether a question may be asked in one way, and whether a question may not be asked in another way, is what they know, and the question is, in nine cases out of ten, absolutely unimportant. But yet it has been decided that the question may not be asked, and so the question is excluded. The information, of course, is got in in some other way, only the time of the court is wasted. The education of those people is wholly neglected; they are

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usually foreigners who have been in America for only a short while. The easy method by which a person may become a lawyer in the City of New York conduces to the flooding of the profession—so-called—with perfectly incompetent and undesirable individuals. A great many of them practising in the Criminal Courts Building cannot speak five words without making five mistakes. How well the interests of a poor prisoner are guarded by these individuals has been described over and over again. They do not study the case, oftentimes they know nothing at all about it until they come to court. If they can get any money from the client—ten dollars or fifteen dollars—they are overjoyed to get it; but they will not work even fifteen dollars' worth. They know neither the facts nor the law of the case, but depend upon the "inspiration" of the moment. In addition to all these qualities, the New York lawyer practising in the Criminal Court Building has no corps spirit. He is not very much to be blamed for the lack of this spirit. It is difficult for anybody to become imbued with the corps spirit in New York City. In Paris, on the other hand, there is this spirit, and there are traditions. Traditions are more easily got where there is a corps spirit and where there is a common place of daily assemblage and daily communication, as in Paris. One of the great functions of the *Palais de Justice* is the formation of this spirit in the legal profession and the inculcation and the maintenance of the traditions of the Bar. It is very hard in a large city like the City of New York to become imbued with the traditions of the English and American Bars. You may read a great deal about that spirit; it may become infused into you, but it is always a sort of non-assimilated thing, always a thing which is not part of you. How can it become part of you? There is no daily, constant practice which makes it possible for the thing to become part and parcel of your being. And then these things that you read about seem to be so far off, and the daily practice seems to be so different from what you read!

In the *Palais de Justice* lawyers meet every day in friendly communion. Struggles are had in common and triumphs are enjoyed together. It is a most interesting sight to see a lawyer plead for the first time. Imagine such a proceeding in an American court, especially in a large city! It will go unnoticed and unencouraged. In the *Palais de Justice*, a person who pleads for the first time is watched with a great deal of anxiety and trepidation, and at the end of his *plaidoirie* he is warmly congratulated by his confrères. The traditions of the Bar are maintained. They are taken in from the atmosphere, they make a young attorney ambitious and emulous of his more

experienced brothers. There is, furthermore, an opportunity in almost every case, especially in almost every case in the *Cour d'Assises*, to make a reputation as a good pleader. For it must be understood that a French trial is no such thing as a trial in America or in England is. The term "trial" in a French Court of Justice is a misnomer so far as the part of the attorney for the defendant is concerned. There is no examination or cross-examination of the witnesses; there is no presentation of the evidence by him or even by the District Attorney. All the work is done by the President in the examination and cross-examination of the witnesses and in the presentation of the case to the jury. The attorney for the defendant gets his opportunity, and makes the most of that opportunity, in his summing-up speech. This speech I shall describe more at length in some other communication, but at the present time I may say that it is not a discussion of the facts such as we know in American courts, so much as an exposition of facts, especially an exposition of facts relating to the defendant's life. Compare this situation with that in General Sessions of New York County. There are five or six parts working at the same time; many mills keep grinding out justice at a furious rate. Lawyers come in for a few hours and go out. Very few attorneys speak to each other. It is only the continuous habitués of the court who chum together. And among these habitués of the court, as I have so often said, there is absolutely no sense of responsibility in regard to the duties of the bar. They do not become acquainted with the traditions of even the criminal bar, or, if they do, the traditions are not those of the best part of American legal professional life. Their appearance in court goes almost unnoticed, and the appearance in court of a lawyer for the first time is either not watched, or, if it is watched, it is watched with hostility or indifference.

Another important difference between the lawyer in Paris and the lawyer in the City of New York in assigned cases, especially, is that the lawyer in Paris studies the case much more profoundly than the lawyer in New York City. This is due to two reasons: First, as I have already said, the Parisian lawyer is better educated; second the Parisian lawyer has an opportunity, because of the French system, to know all the details of a case before it comes to trial. These details are details of fact and not details of law. The law is very rarely discussed in the *Cour d'Assises*. This is one of the great striking differences between a trial in a French court and a trial in an American court. In an American court there are a great many squabbles concerning the law in the case. I refer not only to the quarrels about

facts, but also to the quarrels concerning the law governing the charge. In a French court, the attorney for the defendant, who has already studied the *dossier* which comes up from the *juge d'instruction*, has prepared his argument for the jury. Very rarely, if ever, does anything come out in open court which is not already in the *dossier*, so that there are no surprises to the attorney for the defendant (and, indeed, to all persons concerned) as in an American trial. He has, therefore, an opportunity to present a reasonably good exposition to the jury; I do not say argument, because argumentation is a rare quality to be seen in the French court, due to various reasons, especially due to the fact that a great many defendants admit their guilt and the whole case for the prisoner is based upon extenuating circumstances. French lawyers are strong in exposition and form; American lawyers are strong in argument and the discussion of evidence.

We have in America no state civil legal aid. The French have a method of judicial assistance for people who have no means of prosecuting a civil action. Theoretically, the French system is better. As a matter of justice, the state should give an opportunity to poor persons to seek the justice which they believe is due them. Even in America in spite of a great many drawbacks I should advocate state aid for civil actions. But a process of education should be instituted immediately—education of the public. This is very easy to say, but very hard to do. The form is an amorphous one and gigantic in America, and the problem is one of the most difficult in the world to solve, not only because America is America, big and unassimilated, but also because it is a democracy. But although a great deal can be said against the office of District Attorney, in that political henchmen are put into places there, and although a great deal might be said against a civil state aid department, where people who wanted to prosecute civil actions might go for relief, it would be an advance just the same, and in time we might hope to have better public servants.

A possibility is to have state aid in which the judge of the court where the action is to be brought might appoint counsel. But here a great many difficulties will immediately arise. Judges are given lists by their political bosses, from which the judges select the nominees. This selection would be done under all the more pressure if the appointees were paid. It seems to me that an attorney should get a nominal sum at least, but the appointing power should be the president of the bar association of each county. We shall have other problems arising in such a case, but I believe they will not be as grave as those which will arise if the appointment is made by a judge, unless

the appointees receive no remuneration. In this case there should be a public spirit in the bar which would make it possible for all its members, young and experienced, insignificant and distinguished, to be eager to serve in either civil or criminal actions. In Paris, the *bâtonnier* has a list of individuals who are willing to serve in criminal actions. Young persons and experienced persons are on that list. A spirit similar to that must be infused into the bars of our large cities, and the appointment that is then made from this list by the judge of a criminal court would be perfectly satisfactory.

I said above that, theoretically, the state civil aid system in France is excellent. But we must judge a system by its operation in practice, rather than by its appearance on paper. Take the case of divorce, for instance. This is a very important matter which is often coming up in the courts of justice. A person may, by applying to the proper authorities, receive permission to prosecute an action for divorce, but the procedure is so involved, so long drawn-out, and the possibilities of failure are so great that very few people are satisfied with the results. I have had conversations with several men who have had experience in the matter, and I have been told that there is a great deal of injustice done by delays and by elaborate procedure. I have heard an attorney, in a speech in court, who was defending a prisoner for murder, detail the intricacies and the annoyances which must be undergone by an individual who wishes to prosecute an action for divorce. If we had a State Civil Aid System the delays and injustices would be worse, perhaps, due to our generally inefficient public servants, and to political intrigues.

This matter of civil justice I have referred to, not because I wish particularly to give certain information concerning the French system, but because it has a vital relation to criminal law. The District Attorney in summing up in cases of the *crime passionnel*, sometimes uses the argument that there could have been a reason for the committing of the crime when there was no possibility of getting rid of the spouse, but that when the law for divorce came into existence the reason for the *crime passionnel* ceased to exist. But in order to answer a further objection on the part of the attorney for the defendant, he would very likely say that the defendant was too poor to get a divorce. The District Attorney brings out the point that a divorce can be got free of charge. But the argument made against the District Attorney is perfectly clear, and with the jury perfectly sound. Yes, you have divorce; yes, you have free prosecution of an action for divorce; yes—but what is the use of these

to an individual who has to go through all that a person has to go through and to wait one year and a half before the final judgment is obtained—when the final judgment may be against him? I witnessed a very interesting case not long ago. A soldier had come from the front because he had been informed that his wife was unfaithful to him. He had a scene with her, and after that he went to the office of the *bâtonnier* to obtain advice concerning his future course. Since the beginning of the war there has sprung into existence in the office of the *bâtonnier* a bureau of free consultation, which is open every day. Before the war it was open only once and sometimes twice a week. The soldier was told of the difficulties in his way and the length of time it would take him, and particularly of the fact that, during the pendency of the action, the wife would be receiving alimony and support from the government, and, furthermore, that if he should die, the pension would be received by his wife and that his children would receive only what the mother would, in her discretion, allow. Her discretion would have been used against the children, because she had already abandoned her husband and children for a lover. In spite of these difficulties, the soldier directed that an application be made for the prosecution of an action for divorce. He went off to the front. Letters kept on coming to him, telling him how much he was being dishonored by his wife, and how his children had been abandoned completely by her. All this operated upon his mind. The final sting came when he received a notice that his application for the prosecution of the action for divorce had been rejected. He had considered the evidence of his wife's unfaithfulness perfectly clear. He had witnesses to the fact. The attorney whom he had consulted had told him that the evidence was more than sufficient. He was so disturbed that he deserted from the army to come to Paris for the purpose of doing justice with his own hand. Delayed justice is injustice.

The obtaining of easy civil justice has a relation not only to the *crime passionnel*, but to a great many other crimes. The perfection of the system of obtaining civil justice will bring about a diminution in crime.